

SPECIAL COUNCIL MEETING

MAY 15, 2013

The Special Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair Jay Furfaro at the Council Chambers, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Wednesday, May 15, 2013 at 8:35 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Nadine K. Nakamura
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro

Chair Furfaro: Is anyone here for the Consent Calendar, since there is only one item on the agenda? Please note in the record that I do not see anybody here for the Consent Calendar. Now, the purpose of today's business and Special Council and we need to take it up in the order that I have laid out as we have requirements to meet public notification in the newspapers accordingly for our revenue and budget action. I want to move to item "E."

There being no objection, C 2013-186 was taken out of order.

COMMUNICATIONS:

C 2013-186 Communication (05/08/2013) from the Mayor, submitting his supplemental budget communication for Fiscal Year 2013-2014 and proposed amendments to the budget bills, pursuant to Section 19.02A of the Kaua'i County Charter. Ms. Nakamura moved to Schedule Public Hearing for May 22, 2013 at 8:30 a.m., and referred to the May 22, 2013 Council Meeting, seconded by Ms. Yukimura.

Chair Furfaro: Any discussion?

Mr. Rapozo: Mr. Chair, are we on Item E1?

Chair Furfaro: Yes.

Mr. Rapozo: I would suggest that we call the meeting to order first, I do not think we have done that.

Chair Furfaro: I am certain we did. There was a lot of talking going on...

Mr. Rapozo: That is probably what... okay, I am sorry.

Clerk: We just need an approval of the agenda.

APPROVAL OF AGENDA.

Mr. Kagawa moved for approval of the agenda as circulated, seconded by Ms. Yukimura, and unanimously carried.

Chair Furfaro: May I have an agreement on Item E1 as read by Vice Chair Nakamura?

The motion to Schedule Public Hearing on C 2013-186 for May 22, 2013 at 8:30 a.m., and refer to the May 22, 2013 Council Meeting was then put, and unanimously carried.

Chair Furfaro: Our next item of business, it looks like we are going to the Public Hearing notice.

There being no objections the Council recessed at 8:40 a.m.

The Council reconvened at 9:40 a.m., and proceeded as follows:

Chair Furfaro: Is there anyone that would like to give testimony on the agenda item that is on the calendar for a communication, this is your time to give testimony.

Clerk: Mr. Chair, we have 7 that signed up.

Chair Furfaro: Very good. Let us call the first speaker and then always stay 1 ahead.

Clerk: Chair, are we on the Resolution?

RESOLUTION:

Resolution No. 2013-55 – RESOLUTION ESTABLISHING A COUNCIL INVESTIGATING COMMITTEE TO INVESTIGATE THE MANAGEMENT AND IMPLEMENTATION OF THE TRANSIENT VACATION RENTAL AND FLOOD/BUILDING PERMIT ORDINANCES WITHIN THE COUNTY OF KAUAI

There being no objections, the rules were suspended.

JOAN CONROW: Good morning. Thank you for having this meeting today. I would have preferred to speak after I heard your discussion so that I could respond to, what might come up today. I do want to take this opportunity to urge you to please be bold, strong, and do the right thing and pass this Resolution. This problem has been mushrooming and growing for many years now. It is going to be a little bit of tough medicine to clean it up but it really needs to be done and I really hope that we do not just keep pushing this off to the side for many more years while this problem gets worse. Every day that goes by and permits are renewed, the problem gets worse, so I hope that you will all be strong and please pass the Resolution. Thank you.

Chair Furfaro: Joan, let me just qualify something. The Resolution is on the agenda 1 week after it was submitted to the Chair. In our rules, I have 4 months to put it on. I put it on with some urgency.

Ms. Conrow: I do appreciate that, yes.

Chair Furfaro: Therefore, I also want to say that it is my choice to take public testimony in the advance of having discussion with the members. I just hope you understand.

Ms. Conrow: That is fine.

Ms. Yukimura: Good morning, Joan. Thank you for your work and your presence here today. Can you tell me what you hope as the outcome of this investigation? What is your goal for the investigation? What do you want to see result from it?

Ms. Conrow: What I would like to see come from this investigation is a much clearer idea of what went wrong in terms of the implementation of this law. Some suggestions and recommendations on how to amend the law to make it more effective and to try to keep these problems from occurring in the future, and for people who got their certificates improperly – should be shut down. They should lose their certificates.

Ms. Yukimura: Those are very clear goals, thank you very much.

CAREN DIAMOND: Aloha. Thank you, Chair Furfaro for putting this on the agenda and with the urgency that you did. I think this is an urgent time to address this issue because it is really no small matter that the visitors who stay on Kaua'i, many of them are staying on flood zone on the ground floor where there are health safety and welfare issues. I understand that this agenda item presents issues to some of you and wanting to investigate the County or Departments of the County. Maybe it might expose liability to the County but I also want you to think that every morning that these visitors wake up in these units, the County has exposed a credible liability especially the 1 morning a tsunami comes. All of these have 1 thing in common, that is, the only thing that it says if the tsunami comes is that you open the phone book. Think about the liability that the County has in having approved vacation rentals and visitors staying in flood zone on the ground floor. I ask you to approve this. It has been very troublesome ever since the beginning and there are a couple things I would like to address. One is I heard the Director say that he did not know how to address the Department of Health issues or the flood issues or any of those. I think that is really indicative on how this whole issue, where the SMA is parallel and the SMA was not considered. The main amount of these that have been approved have been on the North Shore, most of them oceanfront in the SMA. The SMA process was not followed. The flood review things were not done and we have people operating resorts with 20 people and having cesspools and we have the coral reef disease just so happens mirror the exact same places that the vacation rental outbreaks have happened. I am not sure how this Council, I think in 2009 when the law was passed in 2008 it had certain criteria that were supposed to be followed and implemented and I think it is clear that Planning did not implement the ordinance, they actually did an registration and approved everyone. I think the question before you today is whether when you make laws, you care whether they get followed or implemented or whether they just do not. Does that matter to you or not? If it does matter, you should approve this Resolution, this investigation and see exactly what happened and what went wrong. It is not to target any individuals, it is really to target and entire planning and lack of planning especially on the North Shore district where we are exposed to health safety and welfare issues. Thank you.

Ms. Yukimura: Good morning. Thank you. What would you like to see from the investigation?

Ms. Diamond: I agree with the goals that Joan laid out for you.

Ms. Yukimura: Okay. Thank you.

Mr. Bynum: Thank you for your testimony. You filed a Uniform Information Practices (UIPA) request and you said they have not been complied with, the law says you need response within 10 days which either deliver the documents or say why not. Did you receive that response within 10 days?

Ms. Diamond: Are you referring the latest request that we made? P.O.N.O has made many requests and back in 2009 the requests that were made were not ever granted. We have filed a lawsuit, Judge Watanabe ordered the County – Planning Department to turn over the documents and they did not. More recently, the Planning Department has been giving documents...

Mr. Bynum: Just let me interject for a second. Judge Watanabe ordered the County to release the documents and they did not?

Ms. Diamond: That is correct. When I hear Mike now saying that the documents are not existent or they do not know where they are, that was in 2009 and so this is 2013 and so I guess we are asking this Council to investigate what happened.

Mr. Bynum: I understand that. What I heard Mike say is the data is not accurate, not that they lost it. My other question is that you filed a UIPA complaint, was there a response from the Office of Information Practices yet?

Ms. Diamond: That was in 2009, so more recently the County has been providing the information to P.O.N.O. except for the last request which got sent back with a note that it had to go through the County Attorney's Office for approval first. It is way more than 10 days and I have not heard from them. The information has not been forthcoming recently.

Mr. Bynum: One of the things we need to investigate, perhaps, is compliance with the UIPA.

Ms. Diamond: Yes.

Mr. Bynum: Thank you.

Mr. Kagawa: Last week we discussed it on the Council Meeting and my suggestion and I think I got nods of the head was can you guys make it a priority now, Prosecuting Office and the Planning Office to look at Joan's list, look at her evidence, and use that and go after. Make the strongest cases you can make and show us you can do one and then we will look at adding a position for each Department because you have proven that you are not just going to talk about it, that you are really going to do one. I thought that had satisfied both sides to a degree instead of going this route, so, I do not know what are your reflection on that.

Ms. Diamond: If you are saying giving them one and see if they can enforce it, I think it is after all these years, that is way below what anybody should expect. I mean, this is their job...

Chair Furfaro: Excuse me, Karen, he asked you a direct question that does not expand your time.

Ms. Diamond: I am sorry.

Mr. Kagawa: Basically, that would not be satisfactory to you?

Ms. Diamond: No, I do not think so.

Mr. Kagawa: Because for me, I think once we do one it will give us more confidence and we start to get on a roll, and we can start to think that we can cure this problem. I heard that they are aware that Joan has all that evidence right there, that she has done a lot of the legwork, the fact finding, and they are willing to go with that route. I do not know if going the route of an investigation will slow that process down.

Ms. Diamond: I guess that is my concern is I heard from Mike that compliance was what he was seeking. I heard the he was going to send out... or he had send out notices for all the people who did not have current reapprovals, so instead of sending out notices that they were shutting them down, they are sending out notices that it is time to renew – hello, you forgot... Are we ever going to get to a level where it is a sustainable thing or are we just trying to keep... having people seek compliance? If the permits run with the land then I think the violations also run with the land.

Mr. Kagawa: Thank you. You, Joan, and Barbara are all heroes. You have sent a lot of your time showing us, the whole Kaua'i a lot of the evidence. Thank you.

Ms. Diamond: Thank you.

Ms. Yukimura: What I want to confirm or negate, whichever it is for you, what you are asking for is a change in approach by the Planning Department to actually rather than accommodate the TVR's to actually revoke them or dismiss them when there is evidence for that?

Ms. Diamond: Sure.

Ms. Yukimura: You sense right now that the Planning Department is just... they do not have the real will to enforce and they are just basically accommodating and letting it keep going, is that true?

Ms. Diamond: Well, if you have not renewed your permit in 3 years and then they renewed 3 years at once, that is more accommodating rather than seeking the ending of it.

Ms. Yukimura: That is true. Thank you.

Mr. Hooser: Thank you very much. I agree with Councilmember Kagawa that you, Joan, and Barbara who did this investigation are heroes in many ways but only heroes if the County takes action to rectify the issues that have been raised by you. I think half of it has been done and it is up to us to do the other half. The conversation that we are having here at the table, to me, there seems to be two halves or more. There is the – how do we enforce the violations and get the existing violations resolved whether it is through compliance or whether it is through their permits. The other question is how did this happen? Were the applicants, the homeowners did they offer fraudulent information to the County, did the County manage the process better, and so the investigation is really looking at the history. It is not looking how do we, at least initially, the report I believe would offer support to the Planning Department to move forward but we are not trying to design... we are still pushing them and asking them to enforce but this... can you speak to that a little bit? This really is looking back at how did this possibly get in this bad situation? There are hundreds of pages here, of reports that you folks have done – hundreds. The facts that you have laid them out and they have not been refuted at all by anyone in County government to say that they are wrong and we have asked them several times to do that. Can you speak to the two – the moving forward and as well as looking backward with the value of each?

Chair Furfaro: Before you do that, Mr. Hooser, would you pose it more as a couple questions rather than having a theory. Pose it as a couple of questions so we can stay within our rules.

Mr. Hooser: I understand. It may be too open ended and I do not want to be too open ended. What value is there in looking back at the actions that resulted in these reports?

Ms. Diamond: Too me, the value is seeing when the Council passes laws, if those laws actually get implemented and in this case it is just the law that does not have much bearing. The whole baring is whether the North Shore is a resort or a residential area and whether the County has the ability to have people be safe there and whether it should be a resort area.

Mr. Hooser: Thank you.

Chair Furfaro: You still have the floor, any other questions?

Mr. Hooser: I was going to ask Ms. Conrow the same question. I do not know if we can ask her to come back up?

Chair Furfaro: Returning Ms. Conrow would not work.

Mr. Hooser: I have no more questions.

Chair Furfaro: Other questions for Karen? If not, Karen thank you very much.

GERALD AKO, Hawai'i Government Employees Association (HGEA): Good morning. For us it is a rare opportunity to be here and before I move on, I just want to thank you so much for the work that you do for the community. You do so much behind the scenes that we just do not realize what you all do, so thank you very much. This morning I come to speak against this Resolution. Not so much against the merits of the Resolution itself but more of the process and the avenue that this

incident is going towards. For us, we really believe that there is, in this one here, an impact upon the collective bargaining agreement. There is a collective bargaining in place, there is the possibility of the impact of the employer/employee relationship that is going on. We are not here to say whether or not you have the right to do this investigation that is out there, I think for us that is not the issue, neither it is for us to say that these concerns should not be addressed. For us, it is a matter of what avenue this issue should be addressed here. We really believe that there is something in place right now, administratively that is set up in case there is impact upon the employees. That there is administratively a process set up and therefore these are the employees that could be affected by this, be able to use their rights (inaudible). I think what has happened one time in the past was where we had the Legislature who are the ones that actually make the collective bargaining laws, so they are the ones that make the collective bargaining laws and at the same time the same Legislative body also tried to legislative a collective bargaining salary settlement and trying to circumvent, I guess in our minds, the collective bargaining process itself. I think in that sense, this is what we see here too, there is an avenue that is available right now and to take it outside of it in an investigative manner, in our minds sometimes we look at it as being a way of circumventing the collective bargaining process. For us this morning we come here to speak again, not so much the merits of the concerns at hand, not about not addressing the concerns but addressing it in what we believe is the proper forum that is already in place.

Mr. Rapozo: What is that collective bargaining process that you are talking about that this would circumvent?

Mr. Ako: If we could keep this in-house Administratively then if the concerns come up and there is an investigation that comes forward, the investigation be very clear in terms of what some of the allegations are that is out there. If not, I think whenever we have an investigation that goes on without specific claims, at that point in time we are not sure where this investigation goes and it becomes, I guess what we call (inaudible).

Mr. Rapozo: Gerald, you are aware that this body has no administrative authority?

Mr. Ako: Yes.

Mr. Rapozo: We have no authority to do internal issues, so that is not an opportunity for this body and you understand that?

Mr. Ako: Right.

Mr. Rapozo: I am also positive that you would not dispute that this investigation would not limit or restrict any of the rights of the employees at the County, they would still be subject to their rights under the collective bargaining agreement – whether it is representation and so forth. I mean, this would not circumvent the collective bargaining process. The employees would still be subject to their rights granted to them under the collective bargaining agreement.

Mr. Ako: Right and that much I understand.

Mr. Rapozo: So, the question is, what is your suggestion for this body to do? If we do not do the investigation, what would we do?

Mr. Ako: I think that this body, for us the open matter would be to throw it back to the Administration.

Mr. Rapozo: Okay, Gerald and I can provide copies of this and this is only going back to 2010. This is just from me personally, not from any of my colleagues here that I asked for a recap and I believe there are more but from what we have... there have been 8 attempts by myself, under my signature, under the County Council letterhead to look into these matters.

Mr. Ako: Okay.

Mr. Rapozo: I will tell you that out of the 8 that I sent over, and again, this is public record I can share this with anybody that wants it. One of them, September 22, 2011 property operating a transient vacation rental. The due date for a response from the Administration was October 10, 2011 and we have not received a response. Request for more investigations on vacation rentals, this was done in 2012 – anyway the key... because you said to throw it back to them, in October of 2012 there was a request again from me on... and these were the same cases that were showing up in Joan's blog. We sent it over October 31 and had a deadline date... and it is a courtesy deadline obviously we cannot suspend or punish anybody from the Administration but it on a courtesy, can you respond to us by November 29, 2012 and as of this date, we have received no response. There was another one April 8 and this was question pertaining to information that was being withheld pertaining to TVR's – the deadline was May 8 and we have not gotten a response. I guess that is my point to the public and to the employees, we have tried... I have tried. This only goes back from when the TVR bill was written. Prior to the TVR bill in my last run here on the County Council, there were more that was sent over and I guess it gets ignored is what I am saying. So, you are saying hold off on the investigation and send it back to them but do you agree that we have tried that based on what I just have told you?

Mr. Ako: Councilmember Rapozo, I am not sure what your avenue of appeal is, when you make a request and you do not get it.

Mr. Rapozo: We are doing it now.

Mr. Ako: And if that is the way you are looking at it, where this investigation goes... then I guess that is your right. That is the call that you make – this body here. I think what we are saying is once we start talking about the impact, what the consequences that may come down to the individual employees that through the Administration side there is a process that they go through. There is standards in terms of whether there was right doing or wrong doing, there is a process to go through that, there is standards already in place. Once we get out of that venue there, then the collect bargaining agreement, I do not believe is partial of that process when you go outside. Whether your appeal is with the Administrative side of the County government is one thing but once you start delving into the employees side that are covered by collective bargaining, I think that is where we have concern.

Mr. Rapozo: Are you going to be here when we discuss the actual intent of the Resolution? Right now...

Mr. Ako: If we need to be here, we will be here.

Mr. Rapozo: I would like you to hear what the intent of it is because right now, I think you... it sounds like you and the public is thinking that we are going after the employees and I think you might be surprised if you hear what the actual intent of the Resolution is. So, if you could stay, I would appreciate it.

Mr. Ako: Sure. Part of it too is, employees have this right that pretty much says that whenever you enter into an investigative hearing, and there is a possibility of disciplinary action coming down, there should be appointed the rights to have representation there. That would be within one side of the appeal process.

Mr. Rapozo: Thank you.

Chair Furfaro: Excuse me, I want to get some clarity. Are you as HGEA saying if the investigation leads towards the employees, you are suggesting with that comment, Gerald that we may have to provide those HGEA employees with Special Counsel, is that what you are saying?

Mr. Ako: Well, at this point in time, we just do not know where it is going.

Chair Furfaro: That is good for me.

Mr. Rapozo: I have 1 more question. Gerald if KPD was doing this investigation, if Kaua'i Police Department decided to do an investigation on a Department, would HGEA have the same position?

Mr. Ako: If it involved...

Mr. Rapozo: If KPD another investigative authority – all we are doing is utilizing an authority granted to us under the Charter and KPD obviously have their authority to investigate under the Charter, under the State law and so forth. Would HGEA basically say please do not do an investigation, just have the Administration deal with it? That is a fair question because now with Special Counsel... and we have an County Attorney's Office that would represent if it got to that point, but I do not want the public to think that we are going out to do this now and hire Special Counsel of every employee, we are not even going after employees. We are going after a process. We are looking at a process. I think a lot of people have jumped the gun. That is what I am saying that it is premature right now because we have not even discussed the Resolution but my question is would HGEA go to the Police Chief and say "Chief, we do not support you investigating any County function right now, we would much rather you give it back to the Administration to do internal." That is a fair question.

Mr. Ako: I am not sure whether I truly understand the question, I think the question is if there is any investigation that is going on, our role is not to be the obstacle out there. I am not to say that concerns are coming up and we are trying to smother any concerns. These concerns that come up should be addressed. All concerns should be address. That is why we are part of good government. But if I am hearing correctly, if it came up in KPD, if it affected our employees then, yes.

Mr. Rapozo:

Okay.

Mr. Bynum: Councilmember Rapozo asked a question that I intended to ask and I appreciate you being here Gerald and I am really concerned about everything related to our employees. I do not believe this... if it is framed correctly is going to... all of their protections, the union protections, and civil services protection will remain intact. I do not think anyone on this Council would intend not to do that. I do not have any question.

Ms. Nakamura: Just based on this format, I want to ask this question but it might be premature because I think Councilmember Rapozo will have the opportunity to describe fuller to the body and the public the process but not having that... and I want to ask you this question, there are different ways to get to answer the question "how did this happen, how did we get to this point?" One, is through the Resolution before us which is the 3.17 investigation and another option is through a Performance Audit. I think the intent for both options is to come up with some findings and some recommendations. You are saying that you are concerned that you may not have some specific claims upfront and clear allegations and if we did it, it is either through an investigation which could be a 2 part one that looks at this information to see what those findings and potential claims are or through a Performance Audit at the end of which we will have some findings and some pretty clear recommendations and possibly some claims. Would that route work? If we did a Performance Audit that came up with some findings then would that circumvent the collective bargaining process?

Mr. Ako: I think it depends on how the findings come out. If you are talking about exposure of individual civil service employees that are out there, what would the recommendations might be, what would some of the short comings might be? I guess, perhaps yes, it would circumvent the collective bargaining process in the sense that... then this would again go back to the Administrative side for another investigation of how the findings came about.

Ms. Nakamura: I am just thinking that it could be structured differently where we do a Performance Audit but at the end if there are very specific claims or allegations, at that point we could initiate an investigation. I just wanted to throw that out and get your comment on that.

Mr. Ako: How it is framed, I guess, and how it comes back. Part of it too is the exposure that comes out there and then it would have to go back to the Administration side again should any action be deemed reasonable or not.

Chair Furfaro:

Any more questions for the speaker?

Mr. Hooser: Mr. Ako, thank you very much for coming. In the interest of full disclosure, I want to thank the HGEA for supporting and endorsing my election as they have many of us at the table here. I think it is relevant to the discussion and we worked together over the years, your organization and myself and I appreciate that opportunity. I sat on an Senate Committee – an Investigation Committee in the Office of Economic Development from the State. At the end of the day there were no conflicts with the HGEA or the members, in my recollection, and so I just want to assure you in my experience anyway, the investigations that I have been involved with have all been done in a manner which employees have full representation. If this investigation proceeded and if you were

assured that the employees that you represent were protected, if you would in terms of the collective bargaining agreement, would that reassure you enough to allow you to support the Resolution?

Mr. Ako: I think the employees will always be protected by the collective bargaining agreement no matter... because in the end, everything has to come back to the Administrative side before any disciplinary action can be taken. I do not believe this body here has the...because of the employer/employee relationships. So, whatever happens outside that relationship is going to happen and it is going to expose employees and then it goes back. I think no matter how you look at it, their rights will always be protected because it has to come back. It is just that once it is exposed, it is exposed and I guess the thing is, how do you get it back?

Mr. Hooser: Right and for the record, the Council would not... it is not our *kuleana* to discipline anyone.

Mr. Ako: Right.

Mr. Hooser: But at the end of the process there is a report and in the Administration, and other authorities determine whether or not there is other action needed. Did you get a chance to review the Resolution that is on the table today?

Mr. Ako: No, I have not.

Mr. Hooser: I encourage you to look at it because it is very narrowly focused. It lists specifically dozen instances to be investigated. I am very aware of when you do this type of thing, that it needs to be focused, it cannot go off track and turn into a witch hunt that some people might be afraid of but it is very narrowly focused. Did you have a chance to read the items that have been reported by Ms. Conrow?

Mr. Ako: For us, our concern has been the process itself.

Mr. Hooser: Right.

Mr. Ako: That there is a process and that it should be there.

Mr. Hooser: It is pretty egregious, the allegations if you would and we have given the Administration every opportunity to respond and they have not done that. I am still trying to understand your concern about not supporting the Resolution because the employees as you say are protected by collective bargaining and the process is just looking into what happened.

Mr. Ako: Again, the collective bargaining process will be there regardless of what happens, it is just that once we take it outside of the collective bargain then there is no collective bargaining rights, exposures are out there, and how do you mend that portion. Regardless of how focus we can be in terms of the investigation in there because in the Administrative side, there are standards and a process to be followed already.

Mr. Hooser: And you understand that we are not going to be disciplining anybody, we are just going to be requesting documents?

Mr. Ako: Yes. That I believe is for the Administrative side to take care of.

Mr. Hooser: Okay.

Mr. Kagawa: I just want to summarize the union stance is that, even though this issue has been going on for some time, there is frustration why this thing is coming up, I guess the union is hoping that the Council stays out of the Administrative functions.

Mr. Ako: Right. And again, I am not saying that we are the obstacle, we are the road block, and this concern should not be addressed. If there concerns out there, I think it is your obligation to address.

Mr. Kagawa: So, if the Council were to work with the union and the Administration and come up with a plan together that it may be better instead of pushing something through that you guys are not really aware of?

Mr. Ako: We will be willing to do that.

Mr. Kagawa: Thank you.

Chair Furfaro: Gerald, thank you for being here today. We are going to continue with our public testimony from our next speaker.

GLENN MICKENS: Thank you. You have a copy of my testimony and let me read it for the viewing public. A huge *mahalo* to Councilmembers Rapozo and Hooser for introducing Resolution No. 2013-55 which would bring into action the long dormant Charter Section 3.17. This neglected Section could be a powerful tool to correct and improve performance of our various County functions.

In my opinion there have been other important issues in the past where Charter Section 3.17 should have been invoked but for some unknown reason it never happened. The Kilauea Gym roof, our roads, our solid waste program, the obscene amount of money being spent on the multi-use path, and the inefficiently run municipal golf course are a few examples of where 3.17 should have been activated but was not.

But thankfully it is now being used to find out why the proliferation of illegal TVRs has been and is going on and must be stopped. I fully realize that this issue is filled with legal ramifications but that is why we need 3.17 to uncover all the facts.

I completely disagree with Councilmember Bynum who said that 3.17 should not be used here since it might open the door for its use in many other issues. If any issue needs investigation and cannot be settled by usual procedures then let 3.17 be the decisive factor in getting it resolved.

I remember sitting here several years ago watching Kaipo Asing put on a PowerPoint showing areas all over Kaua'i where TVRs were proliferating like wild fire. He had the walls of this Chamber plastered with pictures of legal and illegal TVRs and nothing was being done to stop them.

And has been pointed out concerned citizens like Karen Diamond and Joan Conrow had to be the ones to investigate and bring this issue to the attention of the Council and the Administration before 2 Councilmembers wisely decide activate 3.17. Again, why should concerned members of the public have to do the work of those we elect and are paid to monitor what is going on?

This whole issue of major inefficiencies in our system is just another great example of why we desperately need a County Manager to make sure that activities like these do not get started and cost taxpayers huge sums of money to stop. Listening to our union representative, nobody is pointing the finger at any one person. It is the procedure that you are going after. I think whoever is responsible in the procedure, they are going to be responsible. Whether a union person or a none union person or whatever but something is wrong with the procedure. Thank you.

BRUCE PLEAS: As a disclosure, I am a member of the Kekaha Host Community Benefit and a member of the Waimea Air Quality Study. I was also a member of the TVR group from the beginning and help write the law – the ordinance that was passed. I have a copy of the Resolution and the implementation of the transient vacation rental – that ordinance, you need to look into how the existing laws were enforced and unenforced. What were the problems? Why that happened? You need to I.D. them very carefully on the areas that you have, the properties that are there and find out what happened, and then you need to fix the loopholes. A recommendation to how to fix them would be... I think should be forwarded to the Administration. On the flooding building permits ordinance, you have it here flood – the improvements for prepares in the flood zone. You were very vague on that. Our zonings are flood, tsunami, and hurricane in invasion areas and you need to include all those. You are limiting yourself and making it vague wording there. You need to be specific as to which zoning ones you want to look at. These were all brought up during the process and were addressed. I thank you for your time and I fully support investigation at this point. Thank you very much.

Chair Furfaro: Bruce, the stakeholders group that was pulled together by Councilmember Yukimura and myself, I know you participated in from the very beginning and I have never had a chance to thank you. Thank you very much.

Mr. Pleas: It was my pleasure to help along.

Ms. Yukimura: I also remember your participation and it was very critical in establishing the first ordinance on TVRs, so thank you for that. I want to be clear about the main point that you made, you said they have to be specific investigations, can you clarify that for me.

Mr. Pleas: You have listed specific properties that are listed.

Ms. Yukimura: Yes.

Mr. Pleas: You need to come up with the facts, the findings on each property separately.

Ms. Yukimura: Right.

Mr. Pleas: And make sure that they are documented.

Ms. Yukimura: Right.

Mr. Pleas: And also I think suggestions as to how they can be fixed, what the outcome should be in the end, and also it needs to go into... not rewriting but making amendments to the ordinance. Words maybe vague in the ordinance therefore Planning, Prosecuting Attorney and all those do not see eye to eye or do not understand, so you need to get the vagueness out and become very specific so that it can be put before the Court with a base that is solid.

Ms. Yukimura: Changes in the law will not apply to past issues. You cannot change the rules on past performance but you can change the law for future permit request etc.

Mr. Pleas: Yes, but if it is found that this specific properties are in violation, they are in violation under the current law and therefore can be prosecuted. You cannot... and yes, I understand grandfathering but if you are doing something illegal and get caught 6 months later, it does not mean it is not illegal.

Ms. Yukimura: Correct. So, you can judge the existing permits based on existing law and you can change the law for future but your point about each case has to be taken case by case and the factual situation for each case has to be made, I see what you are saying. Thank you very much.

Chair Furfaro: Anymore questions of Bruce. Is there anyone that has not spoken that would like to speak?

JOE ROSA: Good morning. I work as an inspector for DOT Highway. I am pretty sure that the Planning Department have people in their Department to do inspectional work and enforce rules and regulation, just like we in DOT. My job besides being an inspector was to see if there was any kind of thing taking place within the State right of way. If I see anything that is a violation, I come in and make a report to my superiors and they take it over from there. Maybe the Planning Department, you got two high people in the staff and you do not have enough people to do the work that are encountering these problems – the enforcement of the rules and regulations, the dos and the do nots. You need people in the department to birddog all those kinds of violations and you will not have these kinds of problems after the fact. There too much after the fact things that are going on because it lacks the enforcement from the start that is plain common management. That is why I said last week that people are being hired in job positions that are not qualified for it or they do not know their job description. Those are the kinds of things that has to be looked into. I was a union member from the HGEA and we had our job to do, we had to know our job description, and we could not say that is not my job. If it is in your job description, that is your job. It was simply spelled out, you do what you have to do on your job description. That is where enforcement comes in. I did not have to go running over to the Kaua'i Police Department, like the County here, you have an inspector and you report back to your superior, from there you can go to your County Attorney that does the enforcement. That is the way I look at it. It is the lack of management doing their job. Simple as that. The union is there to protect the worker, the employees but the

employers has to do their side of the work themselves, get Personnel to do their job, enforce the violations, come back to them, and then let management take the rest. With a lot of these problems, simple management... that is all I have to say. You cannot do things after the fact, after the fact is too late. Thank you.

KEN TAYLOR: I am here in support of moving forward with Resolution No. 2013-55. I want to thank Councilmembers Hooser and Rapozo for bringing this Resolution to the table. Most of all, I want to thank the community members Joan and Karen and whoever else helped them do their investigative work and I think the important thing here is the community members have stepped forward and done a tremendous job of investigating a problem that exist and should not exist but it does. It is your opportunity to step to the plate and move forward with finalizing this investigation. These kinds of things should not be going on and I think that under a County Manager type of government, this would have been dealt with a long time ago and be behind us but unfortunately things are what they are and we have to deal with it. Please support moving forward with Resolution No. 2013-55. Thank you.

GARY K. HEU, Managing Director: Good morning Councilmembers. I want to thank you for the opportunity for allowing me to speak this morning, Chair. I want to start off by saying I do not think any of us around the table or anyone in this room is necessarily happy with this particular place that we find ourselves at this point in time. I want to apologize for the fact that last week's discussion on this issue, in essence was cut short because of the unavailability of the appropriate personnel from the Planning Department to support that discussion. I do not have to remind you folks that what happen was that discussion was deferred until next week and we can finish it off at that point in time. From a timing prospective, I wish that the consideration of this investigation that is being proposed could have been held off until that previous discussion if there had been closure brought to that previous discussion. I believe some of the information that has been shared with the Planning Director as well as other more recent developments might be useful to this Council as you consider your next steps. I would agree as has been stated on the floor this morning that there is more than one way to get to the outcome(s) that I believe collectively we all want to get to. I think that there is a definite understanding and appreciation for the frustration that has been shared on this floor and in our community. To that end, I just wanted to share some of the things that will probably be discussed in more detail next week and again just wishing that any determination on how to proceed by this Council might wait until that discussion takes place. However, what I did want to let you folks know and I think the Mayor probably referenced it when we were over here in 1 of the budget discussions with you is that he has formed an oversight committee at an Executive level to help him and the Executive Administrative Team get our arms around this issue. Although, I think that Director Dahilig touched on a number of things last week including the... I believe he mentioned a Process Reengineering Study and I think what this body is contemplating in terms of an investigation and from what I hear the intent is, and I know there was discussion of a Performance Audit. I think when you look at a Process Reengineering Study, it does many of the things that a investigation and/or Performance Audit will do. But it goes a number of steps further than that which is why I think we see the value in that. I think that to a great extent there has been a lot of focus on looking at the TVR issue and it is a complex issue. I would hope that we would all acknowledge that but a lot of the perspective has been from the boundaries of what defines Planning's activities and responsibilities. In my mind and in the mind of some others, I think that we should really pull back and take a much broader look at this issue in terms of the other

agencies because I do see this as a multi-agency type of matter. I think we need to do is have a real good understanding of the existing processes that either work or do not work. I think it would be our desire for this study to take a look at this issue and show us not only how to make the process better but take a look at how to gain efficiencies in how we deal with TVR enforcement and maybe the broader context of enforcement of our zoning laws. There maybe things that agencies upstream from the Planning Department should be doing but maybe are not doing. There are things that maybe do not fall within their current responsibilities but maybe they are an appropriate agency to do that thereby taking some of the pressure off of the role that is in play by the Planning Department at this time. I do not want to go into a lot of detail because I am just speculating at this point in time but what I am saying is I think it deserves that broader look. That is only 1 part of the discussion, that is a big picture, a long term type of thing and I know no one sitting around this table or sitting in this room is willing to wait around for 6 months to a year as that study is done and we figure that stuff out. So, I think there is a plan being developed in which we can support some of the near term or short term things that we feel need to be done as in taking some of those violations that have been discussed more recently and how to attack that. One of the things that is currently being formed is a Task Force within the Planning Department to do just that. It would be a 4 person Task Force which would be looking specifically at a few of these violations that have been discussed on the floor and finding a way to effectively move those forward. So, these are some of the things that we are looking at in addition to that, we are looking at... Mike Dahilig mentioned some of the challenges that he is currently facing in terms of managing TVR enforcement and some of it had to do with filing system that was probably not in the condition that would have been desired. There were also talk about some data management that needs to be done and so to address some of those shorter terms issues in support of our immediate handling of the violations, we are looking at some short term resources that can be brought onboard to assist in the management in those areas.

Chair Furfaro:
you.

I have questions from Councilmembers for

Mr. Heu: So, that you understand that some of these things that are discussing are concrete in nature, again, we have been discussing for a while this notion of a Process Reengineering Study and what we would like to do, in fact I have asked the Planning Director to work with our Purchasing and Budgeting Director Ernie Barreira, in fact I have given Ernie the heads-up that the Planning Department will be contacting him to help with the procurement of that Process Reengineering Study. I would like to get that moving in this Fiscal Year, we would like to encumber the funds in this FY to carry the work into the next FY. We think we have funds available to do that and that is something that we are proceeding with as we speak. Again, I just wanted to have that discussion with Councilmembers this morning and hope we can continue to have that sort of discussion as we move to close off the previous discussion next week.

Chair Furfaro: Gary, I hope whatever the outcome today, I hope that is coming to us in a plan – written plan.

Mr. Heu: Sure.

Chair Furfaro: That you are informing us about so that we have something. Before I recognize Mr. Rapozo, I got to tell you when we have been trying to coach this thing along, I remember when I played for Coach Larry, and if I

went back into the defensive huddle and there was somebody I could not keep up with, he was my assigned man. My Coach said, "Jay, speak up and we will put you on the inside and we will get somebody else on the guy, especially if we are playing man to man." I have done this as Chairman now, I want to make sure you understand, we had the previous Planning Department in front of us, "can you keep up with the application processing?" He said, "We got it." "Do you need more funds to focus on it?" "We got it." Second time you ask, I know if I said I could keep up and I could not, Coach Larry would just keep me on the bench. There is no more talking. We were honest enough. I asked the second time if you needed additional funds, "no we got it." We up in the Audit plan – the Audit plan of June 28 a review of assessment of selected issues in the Planning Department to get a review of those applications as it relates to enforcing and planning of permits. It has been in the audit in correspondence to the Chair. Something is not going right with this situation, Gary. So, what you just told to me, you need to put it in a communication to the whole Council because we do not have a very good audit trail of what we said we were going to do, we need to make sure the plan is there as you see it and that you folks are going to use some of your funds, I heard.

Mr. Heu: Yes, our intent is to encumber current year funds.

Chair Furfaro: But it is a team effort here and we keep hearing that back and forth. You speak up if you cannot keep us – no shame. We move the resources as Coach Larry would say. I just need to make sure that what you gave us today that you give us in a form that shows the outline. I would appreciate that.

Mr. Heu: Yes, we will be prepared to do that for the discussion next week.

Mr. Rapozo: I was optimistic that the Administration would come over today and actually support this, I really did. I had this feeling that the Mayor or you would come up here and say that we are looking to fix this issue and we support it because... all what you talked about would be done and would be accomplished in this investigation. All the identifications of the problems that has occurred will be resolved but every bit of... every request that I have sent over Gary goes through the Mayor's Office through you. Is that correct? Every request that I send over to the Planning Department over the last – however long you have been there and I have been here goes through the Mayor's Office and as a "cc" to you.

Mr. Heu: I see all request, yes.

Mr. Rapozo: So, this should not be a surprise to you or the Mayor or anybody in Planning because it goes through that process. I think that was the purpose of that process so that the Mayor would be kept, or at least his office would be kept apprise of what is going on between the Council and the Departments. I think the fact is, the Administration was aware of this problem for many years and even the request that we send over as reminders that we have not gotten a response yet, that goes through your office as well.

Mr. Heu: Yes.

Mr. Rapozo: And as I read earlier today, I am still awaiting responses from 2012. My point is that we have tried that. My question is,

Gary, do you remember and this was many years ago, Councilmember Asing was the Chair and we sat here just like this and I had proposed an audit of Public Works.

Mr. Heu:

It was a long time ago.

Mr. Rapozo: But I remember you sitting here and coming up and saying, we do not support the Performance Audit, we would like to be given an opportunity to do an internal audit of Public Works. I believed you and with the encouragement of the Chair saying give them a chance and let them do their internal audit and if they do not get it done then we will come back with an Performance Audit but we never did that audit. That internal audit was never done either. I sit here today and I understand what you are saying. I really want to believe but I just do not have the confidence anymore that in fact anything will be done. I do not care if you bring more people, the fact that we need more short term resources, we did that last year. We gave them resources last year – we gave two positions. Not positions but two eighty-nine day contracts for two people and that was not utilized. I do not have the confidence and I apologize Gary because I know you want to get this fix as well and I know HGEA has come up and said let us utilize the systems that are in place and the only system in place for this body is the 3.17. I hope you can understand that. Do you recall that day that you were sitting here and you came up and...

Mr. Heu:
was that long ago.

I think it was your first term. I think that

Mr. Rapozo: Maybe that long ago – or my second term, something like that. I remember having that discussion and we being told hold off on the Performance Audit, we will take care of it in-house and it was never done. I hope you can understand my apprehension and my even stronger motivation now to move forward with the 3.17.

Mr. Heu:

Could I respond to that?

Chair Furfaro: He did not pose a question. I got other members. You are hearing some narrative here. I know I reflected on my time on the Council but I have to tell you that we need to move forward. We have the Kekaha people here that were supposed to be here for a 9:30 Committee Meeting and we still have to take a caption break.

Mr. Bynum: You just talked to us all of the things the Administration intends to do to address all of these concerns, is that correct?

Mr. Heu:

Or is in the process of doing.

Mr. Bynum:

Or is in the process of doing.

Mr. Heu:

Yes.

Mr. Bynum: And I appreciate that. I am not clear... if we pass a Resolution to do an investigation, you still intend to do those things, correct?

Mr. Heu:
of the wisdom in duplicating efforts.

We will still proceed, yes. I am just not sure

Mr. Bynum: I will save my comments for later but when Mike Dahilig had to leave early and everybody was concerned about that, was he going to a Water Board Meeting? Was that why he had to go?

Mr. Heu: It was my understanding he had a Water Board obligation.

Mr. Bynum: I believe we had accommodated him being here in the morning because already knew about that obligation, is that correct?

Mr. Heu: I believe he communicated that previously, yes.

Mr. Bynum: I applaud the things that you intend to do. I do not know that that would preclude us from doing the things that I think we are responsible to do. So, we will see how the day goes.

Mr. Hooser: All this is not about people, it is about process and results.

Mr. Heu: Yes.

Mr. Hooser: You have been in that seat for a number of years and probably know more than anyone from an Administration perspective why things have happen or not happen. You have been with several Administrations, several Planning Directors and you have heard from many people that this issue has gone for years. The fundamental question is, why has not the Administration? The Mayor, yourself, the prior Planning Directors – these are egregious – have you read the examples put forth by...

Mr. Heu: I have not read all of them. I have read a number of them, yes.

Mr. Hooser: The allegations include fraud either applicants lying or misstating, someone issuing the permit not catching it or ignoring it. There health and safety issues with people being allowed to stay and unpermitted units in flood areas, there allegations of millions of dollars in profits being made because people got windfall of permits that they should not have gotten in the first place. These are serious allegations and they are not new. Why has not the Administration or the Planning Director if not last year or the year before, or the year before, recognize this problem. Just recognize it, put into place something without the Council and the community having to be at this point?

Mr. Heu: Yes, that is a really good question. I think that the Administration and it is always tough when you talk about the Administration because I think that collectively all Department Heads – we are all part of the Administration but if you want to talk about the Mayor or myself – the Mayor's Office, I think there has been recognition that there is a problem. We have been providing briefings both by the Planning Department personnel as well as the Attorney's Office. Some people would say that it is a resource issue, I say maybe or maybe not. I am uncertain at this point in time. I do know that it is a very convoluted and complex issue from a legal prospective in terms of how we proceed as a County and I think it is our job as it is the job of this Council to ultimately

attempt to reduce exposure for the County. I think that a lot of the decisions that are made and the way in which we proceed may at times seem like there is not much happening but I think in fact many of the actions that are taken, although maybe not at the speed at many would like to see it taken are again be taken in a manner as to reduce the greatest extent possible exposure of the County. One of the first things said was when we were looking at this whole issue, most recently was, that it is a resource problem and that we were going to come to this Council in this past budget session to advocate for additional positions. My feel was that again without thoroughly understanding all the processes and all the moving parts as they exist today that that would not be the responsible thing to do. We should not just simply throw bodies of what appears to be a challenge. I think we need to clearly understand the big picture, the various moving parts, and the entire process before we start allocating resources to help address this thing.

Mr. Hooser: Before I got here apparently 5 years of milk and honey in terms of resources and that has not done it. The investigation as is described in the Resolution – at its core is merely a fact finding exercise. What are the facts? What are in these permit files? What are the facts? At the end of the day that is presented in a report – these are the facts and perhaps some recommendation. What is the Administration afraid of in allowing this Council... or not encouraging this Council to go forward and have an independent outside entity separate from us and the Council, separate from you the Administration. An independent qualified investigation to determine the facts and put the facts on the table and let the cards fall where they may, what is wrong with that?

Mr. Heu: So, that is a question?

Mr. Hooser: Yes, what is wrong with that?

Mr. Heu: I do not think the Administration is afraid of that. What I am saying here on the floor today is that I think there is more than 1 way... there is more than 1 way to get to the same outcome that I think we all want. We all want to see a better process. That is our desire as much as it is yours. I am just saying that we are proposing a different way to get there. Something that again, my belief in the Process Reengineering Study is that it takes us far beyond the results and recommendations of any potential investigation. That is just a different way of looking at the same outline.

Ms. Yukimura: Chair, we will be able to call up the Planning Director or the Administration in the process of discussing the investigation right?

Chair Furfaro: Well, I will tell you what... you are a Lawyer and I went to Business School. I have to tell you that if we call up the Planning Director or the Prosecutor, I would think they would get some advice from the County Attorney if they respond to us because this is now on the record. I do not know. I am not able to answer your question. I certainly know that it is smart business to not put yourself in a box if there is an upcoming investigation.

Ms. Yukimura: I am just asking about the allocation of our time but I will ask my questions now. I just want to say preliminarily that this is coming about because of the lack of action and ceasing of the initiative on the part of the Administration. I am not clear on your presentation as to exactly what you are saying is ongoing and what the results will be of your processes. I heard that you have formed a Multi-agency team.

Mr. Heu: The Mayor has formed an oversight committee.

Ms. Yukimura: Is this oversight committee going to result in effective enforcement of TVR issues?

Mr. Heu: I think that is the... for broadly speaking, I think that is what the intent is, to assure that there is enough focus on this current challenge to ensure that there is significant movement.

Ms. Yukimura: So, the answer is yes?

Mr. Heu: Yes.

Ms. Yukimura: That the team will result in effective enforcement of TVR issues?

Mr. Heu: Councilmember, globally I would say yes but you have to put it in context because if we are talking about a study which would make recommendations on how we should be restructured or how responsibilities should be allocated or reallocated across agencies, that is not going to happen 2 weeks from now.

Ms. Yukimura: But that is what troubles us because you are not even focusing on enforcement then?

Mr. Heu: Well see, you were not listening to the first thing I said...

Chair Furfaro: Excuse me, Gary, I want to interrupt for a second and I apologize to you. I would appreciate it members if you ask a question give them enough time to respond to the question you pose before you pose another question.

Mr. Heu: Councilmember, when I was speaking earlier I talked about a longer term type of initiative that we would want to engage in which is the Process Reengineering Study. In more near term, Task Force that has been formed within the Planning Department of 4 people and I am not sure if you recall me speaking about a 4 person team within Planning which is separate and apart from the Mayor's oversight committee...

Ms. Yukimura: Alright, and so...

Mr. Heu: That 4-person Task Force, their function would be to look at the ongoing violations that have been discussed on this floor recently to see how we can best move those forward in an expeditious matter to a point of resolution.

Ms. Yukimura: Can we expect to see in the next 3 months at least a case brought to a Hearings Officer for fines or revocation of permit and/or a case brought before the Court for criminal wrongdoing?

Mr. Heu: We would like to move as quickly as we possibly can in terms of being able to present a case either from a civil standpoint or criminal standpoint, something that we feel would be successful.

Ms. Yukimura: So, the answer to my question is yes we can expect... because when you say "as soon as possible," that has no meaning to us anymore. People saying "as soon as possible," has meant 1 to 3 years.

Mr. Heu: I would agree and I would say that it would be our great desire to have that done as soon as possible, no more than 3 months but can I commit to you today, I sitting here do not know the complexity of any given one of these cases.

Ms. Yukimura: But hopefully your Planning Director and the people who are directly associated know this. Why was Councilmember Rapozo's requests not answered?

Mr. Heu: That was not a question before so I could not respond to it but thank you for asking the question. Before we could give you a response to that, I would ask that I be given the opportunity to go back and check our logs because I am being told that there were a number of responses that were provided... so, where does the truth lay, I do not know. I would ask to be given the opportunity to go back and look at those logs to see what kind of response came in and how did we responded if we responded.

Ms. Yukimura: Okay.

Mr. Heu: I can provide that back to this Council in writing.

Ms. Yukimura: Because some of them were responded to by E-mail rather than formal paper responses?

Mr. Heu: Again, I could not say.

Ms. Yukimura: Okay. Can you do that before the end of this day?

Mr. Heu: I am not certain if... I will attempt to get a reconciliation.

Ms. Yukimura: Because it would be good to... it is just not right that Councilmembers,, I mean maybe a one, or 2, or 3... but a year or so...

Mr. Heu: Let me ask you this...

Ms. Yukimura: And if the answer is, there is an ongoing investigation and therefore we cannot respond to your specific answers, at least that is an answer but no answer, it does not seem appropriate.

Mr. Heu: Councilmember like I said, this whole issue is up for discussion again next week, can I commit to getting to you no later than prior to next week's meeting?

Ms. Yukimura: Well, what I am concerned about is that it factors into the decision that might be made today on the investigation.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: I have to tell you before I go into the break here, I am going to pose a question to the group. I would like some honest response to my request. We started today early at 8:30 thinking we would go an hour and for 9:30 we had a number of people come down for the Committee on Environmental Services for the landfill. I have complied to taking testimony on this particular piece for the Special Council. Clerk, just yes or no, may I recess for an unspecific time for later today this Special Council?

Clerk: If there is no objection from the body then you can.

Chair Furfaro: I will ask that objection, but by the rules I can do that right?

Clerk: Yes.

Chair Furfaro: We will take a break, when we come back we will call to order the Committee Meeting's for the day, we will go through the minutes of the Housing & Transportation, we will go to Environmental Services on the Kekaha Host Community Benefits, and then we will recess. Those people that have come from Kekaha can address that item and choose to leave for the day. Is everybody okay with that?

Mr. Bynum: And then we will return to this?

Chair Furfaro: And then we will return to this but later in the day. Okay. We understand what we are doing when we come back and we are now on a 10 minute recess... did you have something Mr. Kagawa?

Mr. Kagawa: So, the plan would be to take up Kekaha and then probably take a lunch and then come back to...

Chair Furfaro: If that is the way it works out but for right now I need us when we take the break, I need us to recess the Council Meeting.

There being no objections, the Council recessed at 11:07 a.m.

The Council reconvened at 3:37 p.m., and proceeded as follows:

Chair Furfaro: I want to cleanup some other business on our agenda today, for this Special Council Meeting there is a need for us to get the actual approval on the Resolution, so we can have discussion, we also need a receipt on the Consent Calendar, right?

Clerk: Yes.

Chair Furfaro: We took public testimony.

Mr. Rapozo moved to receive C 2013-185 for the record, seconded by Mr. Kagawa, and unanimously carried.

Chair Furfaro: We will go to the Resolution as it is on the table now, we took all the public testimony on it but I need a motion and second.

Mr. Rapozo moved to adopt Resolution No. 2013-55, seconded by Mr. Hooser.

Mr. Rapozo: Mr. Chair?

Chair Furfaro: Yes.

Mr. Rapozo: I would like to explain the Resolution. First of all, I would like to thank you for allowing this Resolution to be placed on the agenda in a week. To be honest, I had expect to have to fight for that but Mr. Chair and for the public's knowledge it went in and was approved immediately without any questions. I appreciate that and that is first of all. Second of all, I would like to thank the community for coming forward and really, although these issues have been around for many years, I think the fact that these matters became up on blogs and really raised awareness for the members of the public and the Councilmembers as well. I just want to state before I get into what I believe this investigation would do after hearing some discussion today and it was probably taken the wrong way but our job here on the County Council is really not to please the community or the labor unions. It is a tough job here at times, we have to make tough decisions that sometimes our constituents or our friends or in fact family members, we go back to the Big Box Bill – I really irritated my mom with that vote. But that is our job. We got to do with what we believe is right for the community and not special interest. I wanted to preface my comments with that. I was kind of disturbed by the testimony from Gerald Ako because... about the collective bargaining issue because that is something that is law. That is not something that we could legislate around. It is not something that we could avoid. Regardless of what happens here today those employees anywhere in this County or State is protected by collective bargaining contract, so I am not concerned at all. I believe that argument was really baseless. In fact, if you agree with that rationale then we would not be allowed to do 3.17 at all. So, it would be as the Attorney's would say, would result in a... what is that term they use? "Ridiculous result," something like that... I forget what they use.

Chair Furfaro: Absurd.

Mr. Rapozo: Absurd, thank you... That is kind of what it would be... it would be an absurd result to think that we could not do it. In fact the collective bargaining agreements and contracts are there in the event investigations and so forth are enacted. I just wanted to go real quick – phase 1, phase 2, phase 3, phase 4. How I envision this process to go and to alleviate some of the community and union concerns that we are on a witch hunt. Number one, phase 1 scope and procurement that is what it would be. I know there are some concern about the 3 member Committee. The reason why I proposed a 3 member Committee is because the Sunshine Law as it is currently written exempts investigative Committees of members that are less than the quorum. So, in our Council, we have 7 so anything less than 4 would be able to conduct their business without having regularly posted meetings. With an investigation like this it would just make sense otherwise every time the Investigator or the Attorney would have a question for the Committee, we would have to post with the 6 day notice, hold a meeting, make the decision and then send it back off. Whereas in the Committee structure with a 3 men Committee

– 3 person, I should say... that would not be necessary. We could perform the duties of the Committee much like the Human Resource Committee. If you look at how the State Legislature or the Congress does it, they do not utilized the entire membership. Our case is a little bit different because of the Sunshine Law but this would give the Committee the opportunity to move actually quicker, saving time of the investigation and obviously saving some money. That is the first phase of the Committee, it would be to set the scope and procurement. We would be utilizing the assistance of Peter Morimoto or Christiane, our own legal staff with the assistance from the County Attorney's Office if need be. Phase 2 we would have the firm, the investigators identify all of the properties that are in question, which we stated most of them. In fact, all we are asking for is on the Resolution and validate or invalidate their certificates or permits. That is the first step. They are going to go down that list and say which ones are actually valid or not and if in fact it is valid, it gets taken off the list. If it is not, it goes on to the next phase. At this point, the firm would then report back to the Committee which would then report back to the full Council on what that phase had produced. In other words, we would get a report that says out of the "X" amount of 16 or whatever it is, 13 of them at this point invalid and not proven to be valid. At that point, the next phase would be to identify the breakdown in the process that created this. They will be determine whether or not the problems are systematic, were they oversights, fraud from an applicant, and at that point they would submit their reports based on all of the remaining properties. That report would be submitted to the Committee which at that point would be forwarded to the Council. After that when the Committee receives all the reports from the investigators, the Committee would submit the findings and recommendations to the full Council where in fact any action would be taken. Any action would be taken, would be coming out of the full Council. That is my proposal that is the intent. I want to make it clear that it is not the intent of this 3 member Committee to conduct the investigation. In fact, all the 3 member Committee will do is to facilitate the procurement of the... or the selection of the firm and then report regularly back to the full Council. At the end, make the proper recommendations to the Council for Council action. The Committee is not tasked with making any decisions or actions whatsoever. That is pretty much all I have right now, Mr. Chair, I want to hope that we can secure this today and get the necessary votes so we can start the process. I believe this process will assist the Administration in getting to the result that we kind of heard that they want to get to but the bottom line is that I think it is time for this Council takes our action that is authorized to move forward. Thank you very much.

Chair Furfaro: I have a few questions for your presentation. First of all, on the legal staffing it should be from the County Attorney's Office and not from our legal analysts. They are not charged with those interpretations as analysts. They are not County Attorney's either. They are Attorney's for the Council in a way of interpreting structure to ordinances and so forth. I understand your point but it would have to be a Deputy County Attorney. Number two, I know when I set up the two Committees that we had of three for the Rules Committee as well as the Human Resource Committee, I attended that Committee Meeting the first thing I was told that OIP had a problem with having a 4th or 5th Councilmember participating in that and I want to make sure we understand that if it is a 3 member Council/Committee that actually eliminates the other members from participating until such time the recommendation is made to the full Council.

Mr. Rapozo:

Can I just add to that real quick?

Chair Furfaro:

Sure.

Mr. Rapozo: That is true; however, if the Chair, if you feel that you want to participate in the discussion, it would just have to be posted.

Chair Furfaro: Yes.

Mr. Rapozo: So that would not eliminate any participation from the Council. It would just require that a posting be made by yourself or any Councilmember in Executive Session where in fact the discussion could occur. So, it would not remove...

Chair Furfaro: It would not remove your ability to participate with notice.

Mr. Rapozo: Correct.

Chair Furfaro: I just want to make sure that I am very clear, it is not like we can sit in and participate in the whole session. The reviewing of permit processing, I guess, I am going to talk a little bit later about our own review of permitting but that would be material that you would get from the Planning Department. That would give the subpoena power to the Committee to get that and I probably want to hear from the County Attorney on that. I want to also make sure for the Committee of 3 that they would be... everything would be transcribed? I believe we are acknowledging that. Do you have an idea of what kind of time would be laid out here? Would this be weekly meetings of the Special Committee, would this be twice a month? Have you given any thought to that schedule?

Mr. Rapozo: I have. In fact, I am assuming that we would get a weekly report from the contractor whether it is an investigator or attorney. It would be basically as needed. I would assume that early on... the majority of the time is really going to be taken during the scope, trying to get the scope to a point where in fact it meets the requirements of the Resolution. Once that is done and the contractor is onboard, I envision possibly weekly, maybe every 2 weeks, an update...that is why I believe the 3 member Committee is so important because these things happen quickly. Should a development or a question arise rather than have to go "Mr. Chair, we got a question from the investigator, can we go ahead and post for next week which is 6 days," versus the 3 member Committee which could get relatively quickly, get on a conference call, and meet their requirements. I do not envision the entire process to take longer than 6 months before we get a final product from the day they begin. That is just using my own experience as an Investigator looking at what needs to be done. It all depends on what is available, what will be made available to the Planning Department and the other Departments. I believe that within 6 months, we could have a final product from the contractor.

Chair Furfaro: You and Mr. Hooser are looking that we would put special funds aside to hire an investigator?

Mr. Rapozo: I believe we currently have assigned funds in the Special Counsel line – that is what I am proposing that we use.

Chair Furfaro: And that Special Counsel does not necessarily mean we would get a Special Attorney and an investigator, you would start with an investigator reporting to the Committee?

Mr. Rapozo: Correct.

Chair Furfaro: Couple more questions for clarity here, I also want to make sure contrary to what I heard, I want to make sure that we all understand that the County Attorney's Office and the Administration, we do have 6 TVR special permit that these permits that were denied 4 of the 6 have agreed not to pursue, they backed out of it. Of the pending 2, one is actually before a hearing's office and the other one is in the Court system. There are 2 other contested cases going on at present dealing with special permitting appeals as none authorized TVR issues. There are 4 appeals that are before, I believe Hearing's Officer is Mr. Nakamura as well and there are 3 more appeals that have been filed at the annual review. So, there are 7 appeals pending challenges from the Planning Department or the County Attorney and there are 6 of those appeals that we have now received written abandonment notices from the applicants so that they in fact if they sell the property, the permit is not part of that sale agreement. I just want to make sure that if we cross into some of these areas that are being handled right now by either the Hearing's Office and the Court's and so forth, there is a sensitivity that there is about 30 of these activities going on right now and that the Department is sensitive that these are long legal processes that have been going on. The County Attorney's Office has been working on it with Planning and so forth. Some of these have been going on for about a year and a half, I just want to make sure we recognize that let us not disturb any of the work that is going on. I think it is really important that the Committee is sensitive to that.

Mr. Rapozo: Understood.

Chair Furfaro: Who do you see Chairing the Committee?

Mr. Rapozo: I would offer to Chair unless there was some objection. The other thing when I did the original draft, I had requested that the third member be the Chair of the Public Works Committee which makes sense because buildings and so forth come under Public Works. The final draft was left as you can see, it will be selected by the Council. I do not have a problem with that but my preference would be the Public Works Chair but I will definitely leave it up to the Council.

Chair Furfaro: If any dialogue goes on, because we are in session and someone from the Administration – the County Attorney's Office wants to speak on something that maybe I said that was an error or something, I want to make sure you raise your hand so I suspend the rules. We still also have questions that Councilmember Yukimura had asked before we took the break of the Administration and I want to go back and visit that today as well. You have addressed pretty much my questions. I want to see if there are questions from the other members first before we go any further on how you laid out the procedural pursuit by the Special Committee. Any questions in addition to what I have asked?

Ms. Yukimura: I appreciate you laying out what your thoughts are about the process that would happen if this Resolution would pass, Councilmember Rapozo. In phase 1 where you say it is the scope and its

procurement of an investigator, that is your phase 1, do you envision the Committee operating in Executive Session?

Mr. Rapozo: I am not sure I understand that question.

Ms. Yukimura: Will the meetings be open?

Mr. Rapozo: They will not be.

Ms. Yukimura: Okay.

Mr. Rapozo: The meetings are exempt from Sunshine Law so there would be no need for Executive Session or an open session.

Ms. Yukimura: Right but basically it would not be public meetings. The Committee would not allow the public to view the meetings?

Mr. Rapozo: Nor other members of the Council.

Ms. Yukimura: Okay.

Chair Furfaro: I thought that is what I was trying to get at.

Ms. Yukimura: I am sorry, I was not clear and that is why I am asking the question.

Mr. Rapozo: Let me just say that even if it was not a 3 member Committee, they would still be open to the public because it is an investigative hearing.

Ms. Yukimura: Right.

Mr. Rapozo: So, it would not be open to the public anyway.

Ms. Yukimura: Who do you envision having the subpoena power? Would the investigator have the subpoena power? Utilizing it from the authorizing Committee?

Mr. Rapozo: The authorizing Committee would issue the subpoenas to the Investigator or the Attorney. So, basically all subpoenas that leave the Council via the Committee would be done by the Committee... would be issued by the Committee.

Ms. Yukimura: But the actually questioning – would there be a Court reporter with the investigator if the investigator is subpoenaing the people to testify and there would be a Court record, sort to speak.

Mr. Rapozo: There would be a recorded statement with a transcript as the Chair has requested but there would no Court report – this would not be a hearing. This would be an interview.

Ms. Yukimura: Okay.

Mr. Rapozo: So, there would be no Court reporter.

Ms. Yukimura: But Committee members would be part of the subpoena, questioning, and so forth?

Mr. Rapozo: Not as I envision it. How I envision it as I stated, once they get the scope, the investigator would proceed with the investigation.

Ms. Yukimura: Okay.

Mr. Rapozo: And the Committee would be there as a resource should they need anything but the Committee would not participate in the active investigation as a Resolution.

Ms. Yukimura: And then you stated...

Mr. Rapozo: Again, I have spoken to Mr. Hooser about this because we were both on the Resolution as Committee Members, and Mr. Hooser feel free to...

Mr. Hooser: If I could add, what Councilmember Rapozo is indicating is my understanding the process as well and so that is what I understand it to be and that is what my support is based on. It is also my understanding that initially and majority of the subpoena power would be the documents, initially. But, yes, we would not be actively questioning, we would only be following the advice and supporting the investigation. I think we all understand that it very important to have it be independent and professional.

Ms. Yukimura: Thank you. And then for phase 2 you said the first step would be to determine whether the permits are valid or invalid, I do not know the sub-committee or the Council would have the power to determine whether a permit is valid or invalid. It seems to me that it is adjudication of sort that has to be done by a Hearings Officer then confirmed by the Planning Commission or in a Court. Maybe I am not clear about what you mean.

Mr. Rapozo: Maybe I stated it wrong, maybe I am using the wrong word when I say "valid" and "invalid." What the intention is, the list the we provided on the Resolution of TMKs, and there allegations with each one that it is missing document "A." I think Mr. Hooser alluded to this either today or the prior days, the Planning Department as of this date has not disputed any of those allegations. I think the first thing we need to do and again, this is the investigator in me that is speaking, is first of all out of that list find out which ones we are going to pursue. Obviously to go and send out the guy out on 16 cases... what we need to determine first of all, some of those may actually be legal TVRs and for whatever reason, Ms. Conrow never got the information, so the allegation went up on the blog and she may have been lacking some information that exists that was not provided. That is step 1, going through that list and figuring out are there any on there that are actually legal? If there are, then it goes off the list, and they focus on the ones that are in question. You are correct, only the Court can rule at some point whether or not it was valid but I am hoping that majority of those TMKs on the Resolution that you read are legal. I really do. I do not think so but I am hoping that on the first phase of this investigation that the report comes back and says out of the 16

that 12 of them were legal and in compliance and the other 4 was not, and then we are going to move on with the 4.

Mr. Hooser: I agree that only a Court can adjudicate and I do now know what the right words are either... it might be "which of these appear to meet the criteria where they would be in compliance." I think that would be in compliance that might be a way to do it. I think once you do the scope of work, procure, then the Committee will sit down with the investigator, would lay all the information that is publicly aware and then have a discussion on how to pursue. The investigator might have suggestions on how to do it differently but I think what Councilmember Rapozo is saying is the first thing is to establish the facts if some of these appear to be in compliance then maybe they get moved to a different list and we focus on the more egregious ones that are currently not in compliance or at least on the surface.

Ms. Yukimura: Okay. The Chair mentioned 30 activities...

Chair Furfaro: Let me clarify myself. The Resolution is on those 16 items that have been identified that we have reason to pursue but of the 30 that I know Administration, Planning, and the County Attorney, I do not know which of those cross over on those 16. The Resolution is specifically for the 16 but I do not know if there is any cross over to this. I am just saying that if there is a cross over, we need to be very careful.

Ms. Yukimura: Okay.

Mr. Rapozo: Can I just add real quick?

Ms. Yukimura: Yes.

Mr. Rapozo: If it does cross over, Mr. Chair, it would be my recommendation that it is not part of the Council investigation.

Chair Furfaro: Okay, that is what I was looking for, some assurance here.

Ms. Yukimura: So, if I counted right there are 18 under number 3 of the Resolution. Is it 16?

Chair Furfaro: 16... 18, I am not sure. I want to make sure that we are talking about the ones in the Resolution.

Ms. Yukimura: Yes, there are 18.

Chair Furfaro: Okay 18, I spoke wrong.

Ms. Yukimura: So, is this the 16 in Ms. Conrow's blog plus 2 more.

Mr. Rapozo: I would have to check with staff.

Ms. Yukimura: Yes, but there are 2 more besides...

Mr. Rapozo: No.

Ms. Yukimura: Oh, there are 18 now?

Mr. Rapozo: Yes, she must have updated her blog.

Ms. Yukimura: Okay, I will wait to ask other questions.

Chair Furfaro: I want to make sure I clarify myself here, what I am saying is those that are listed is what we are pursuing in the Resolution. I do not want a situation that is a catchall that take the Committee on for a year and a half till 2 years. I want to be focused and if I vote in support of it, it is based on those that have been brought to our attention.

Mr. Bynum: I do not believe that it is limited to these 16 because it says, "if the Committee determines that other TVR applications warrant investigation, the Committee may, at its discretion, investigate and make findings regarding these other building permit applications." I like that provision, I think the Committee needs that flexibility. So, I just wanted to say, do you agree that it is not necessarily limited to these stated?

Mr. Rapozo: I agree. In fact, I was going to bring it up...

Mr. Bynum: Other than that, I think you explained your position well and I have an amendment, I will just tell you right now, to change the makeup of the Committee. The rest of the Resolution with 1 exception of which I want also have an amendment for – a couple words... I want to find a way to support.

Mr. Kagawa: I have some questions for the County Attorney when the time permits.

Ms. Nakamura: At what point do you see the Committee using the subpoena powers?

Mr. Rapozo: Personally I would see that all request for documents, initially, would be Via subpoena. That is my position and that is what I would recommend to the investigator or the Attorney, whomever we hire. Subsequent to the documents because it is going to start with the documents, the investigator will have to go through all these documents. I think it is going to take a large chunk of time will be just shifting through the documents and getting the documents. I would anticipate subpoenas going out for each of the TMKs. The subpoenas would be – I envision 1 subpoena per TMK on the Resolution. Phase 2 that would be the subpoenas in my opinion and then when they report back to the Council at that point when they go into phase 3, they may utilize the subpoena power to get a body to interview should there be some uncooperativeness if people do not want to testify. One of the things about the subpoena authority and putting employees under oath, they have to tell the truth and that is what we want to get to. Mr. Hooser calls it fact finding, we want to find out the truth. We want to find out where did the breakdown occur? So, I would envision for all the documents a subpoena would be issued and in some cases subpoenas may be issued for interviews. It is not depositions or Court hearings, it is just interviews where the employee would be required to come in and again the employee has all the rights under collective bargaining civil service and protections, so I do not anticipate any problems with that.

Ms. Nakamura: In phase 2, do you see any need for the investigator to speak to the Planning Department investigators or staff or County Attorney's?

Mr. Rapozo: I would guess at some point, if in fact documents are missing... if there is no document for a requirement for the TVR bill, I would guess that we would have to go to Planning and say "I got the records in file x,y,z and I am not showing a... whatever document is required." It could be a tax record, proof of GET, TAT – do we have it?

Ms. Nakamura: It would be more of a interview/questioning – not under subpoena?

Mr. Rapozo: Not in phase 2.

Ms. Nakamura: Phase 2 would be more of the casual questioning.

Mr. Rapozo: The fact finding.

Ms. Nakamura: Okay.

Mr. Hooser: I think there is a certain familiarization that the investigator would have to get familiar with the Department or with the operation which would not need a subpoena to do that to talk to the County Attorney – that kind of thing. In the Investigative Committees that I have been involved with it was decided and I think rightly so, the consistency was important. So, if you are taking statements as part of the investigation then rather than subpoena one and not the other, you want everyone to be under oath and everyone's testimony to be consistent with that. Whether that is the same premise investigator or this conclusion happens or not, I do not know, but there is a value to that that everyone's testimony is on the same playing field. Our experience was that the employees asked to be subpoenaed – wanted to be subpoenaed because it made it easier for them.

Ms. Nakamura: And in that instance the employees who were subpoenaed represented by Counsel either personal or State sponsored?

Mr. Hooser: Some were and some were not. The situation I was involved with was a public hearing, like here in this room, it was not an investigator just doing an interview on tape. It was something a little different.

Ms. Nakamura: Because what I am hearing from both of you are different. What I heard from Mel is that it would just be sort of questioning and fact finding and getting information and then from what I heard from you, Gary, is that you... it might be a better playing field if everybody subpoenaed so when the investigator goes out and talks, it is... so, I just want to get clarification.

Mr. Hooser: Councilmember Rapozo has more experience, I mean I have done 1 Committee but he has more experience in general. I think there are different conversations that the investigators will have. Some of those are familiarization type of... how does this work, normally – that kind of interview.

After all the paper has gone through, wanted to make some determinations that maybe we need to put somebody under oath.

Ms. Nakamura: Okay, so maybe you are saying phase 2 – not too many subpoenas? You would not use subpoena power unless needed?

Mr. Rapozo: I will not say “we will not use subpoena.”

Ms. Nakamura: Unless uncooperative?

Mr. Rapozo: Correct. What I said was that in phase 2 it was more fact finding. So, in the event a specific document was not in the file as was turned over, for the investigator to go over to Planning and say “do you have this document, it was not in the pack.” That would not require a subpoena. However if the investigator is going over to do an investigation or interview then Mr. Hooser and myself did agree when we spoke a couple days ago that that should be under subpoena if it is what was going to be an interview. I do not anticipate that happening in phase 2 but I could. That is the things with investigations, you never know what you uncover but I do not envision phase 2 being interviews as it relates to the substance of the cases.

Ms. Nakamura: So, once you get the substance of the cases worked out and phase 3 is when you really look at what are the breakdowns in the process.

Mr. Rapozo: Right.

Ms. Nakamura: That is when you would do the subpoenas.

Mr. Rapozo: That is when a schedule of interviews will be done.

Ms. Nakamura: Okay.

Mr. Rapozo: And at that point the subpoenas would be issued.

Mr. Bynum: This is really important discussion for us to have because I do not see it going that way at all. The way I see it is we do the scope, there is an investigator that we know who is likely going to be from a law firm in O’ahu that is objective because those law firms has the whole package and that we have done in the past. I would hope that we go through the whole process without subpoenaed anybody or anything. I think the investigator will tell us when they feel that they need that. One of the main reasons I would want to go this route is so that power was available if necessary but I would fully expect the Planning Department to cooperate and supply documents. I fully expect the County Attorney’s Office will advise us if we choose to go this direction and I fully expect that any County employee who is asked to meet with the investigator, will get Counsel from the County Attorney’s Office. It is correct, there may be employees who say that if they are going to be talking to an investigator, I want it under subpoena, I want to be under oath but those are things for the consultant and the County Attorney’s and the Committee to address. I do not think you start by sending subpoenas, I fully expect our Planning Department is going to open their files and cooperate with us. If the investigator feels like somebody credibility is in

question or if they need this... and I am just talking as a lay person... then they are going to come to the Committee and say "I need a subpoena for this purpose." That is the way I would envision it. I think any time a County employee is put in this position, they have the right to have Counsel, just like if I was asked to be investigated by somebody, and in my role as a County employee, I would expect to have access to the County Attorney's Office. I trust them to be objective and to play the role. They may discourage us from doing this but if we choose to do it, they are going to support us.

Mr. Rapozo: I just want to address Mr. Bynum's concern about the subpoenas. I would never second guess his on Therapy/Family, Marriage Counseling, or Social Work, I would never because that is your expertise. I would ask that you do not second guess mine. I can tell you that I have done thousands of investigations and I can tell you that the subpoena is harmless, painless, and it does not cost you anymore. What it does provide is an assurance that those documents are going to be provided in a specific timeframe, if not, you have the power of the Court to enforce. That is all it is. Otherwise, it will be like the examples I gave today, the 2008... that is what we could run into it. Mr. Bynum if the investigator came and said "Committee, I do not think we need to issue subpoenas, these guys are cooperating," then I am saying – sure. If you can get the documents and you are getting everything that you need, yes, we do not need to issue subpoenas. It is just my general practice and cases work a lot quicker when you have the subpoena. What the subpoena comes, it is a sense of urgency. Whether you have a subpoena or memo, I can tell you, the memo goes in the do later tray and the subpoena goes in the do now tray. That is from my experience.

Mr. Bynum: May I respond? That maybe the way it turns out but if Councilmember Rapozo plays a role in this it is going to be as a Committee member, it will be as a Committee member not an investigator?

Mr. Rapozo: I am not playing a role in the investigation at anything.

Mr. Bynum: So, I am just saying that I want to defer to that investigator and the reason I would vote for this is to make those powers available. I think it does not fall in the memo to the Administration category once we invoked 3.17 and it is known that we have these subpoena powers, I think it will be treated differently than a normal memo – maybe somewhere in the middle but we will have that tool should the investigator need it. I cannot imagine any Committee member would overrule the investigators recommendation about a subpoena.

Mr. Rapozo: That would not happen.

Mr. Bynum: And if it did, it would be part of the record and people are held accountable.

Mr. Rapozo: Exactly. Mr. Hooser and I spoke about whether it is... at anytime the Resolution could be repealed. At anytime the full Council if they felt that this has turned into a witch hunt from Hooser or Rapozo, remember now, the updates would be at the Chair's request. At any time the Chair wanted an update for the Council, it would happen. It would happen with the investigator Via conference call or whatever. At any point that the Council that the Committee maybe overstepping their boundaries, at that point, the Resolution could

be amended or repealed. Again, when we start talking about the scope, if it is a concern of the Council that we want to pursue compliance, cooperation prior to subpoenas – I do not have a problem with that because I like you would trust the investigator that we hire.

Mr. Bynum:

Thank you.

Ms. Nakamura: I think there is sensitivity about this discussion because I think it sets the tone between the investigator and the Departments that are being investigated whether it is cooperation or give us this, we need this now. There some value to both, so I just wanted to point that out. How much do we have in our Special Counsel line item? This is the Council's Special Counsel line item?

Chair Furfaro:
Counsel line item.

We have a balance of \$35,000 in our Special

Ms. Nakamura:

That is the balance in that account?

Mr. Hooser:

That is the budget going forward, I think.

Ms. Nakamura:

Is it the current Fiscal Year?

Chair Furfaro:

Excuse me, everyone.

Mr. Hooser:

I am sorry.

Chair Furfaro: I will get you the correct information. Let me restate what I said to answer your question – could you ask Scott to look at period 8 and give us the current budget.

Ms. Nakamura: Thank you. Do you see the scope of working being any different then what is in the Resolution?

Mr. Rapozo:

No.

Ms. Nakamura:
work.

Because phase 1 is to determine the scope of

Mr. Rapozo:

In the context of procurement.

Ms. Nakamura:

Okay.

Mr. Rapozo: To determine the scope and get it out to procurement. This is the foundation of the scope – what you are reading on the Resolution.

Ms. Nakamura:
this would be what would be...

Okay. So, in the procurement documents,

Mr. Rapozo: Well I do not know if it would be as specific down to the TMKs but I guess the Procurement Office will put together the scope. I can tell you that I have done investigations for the Council pre-Counsel and the scope of work was limited to what the investigative services and so forth. The

foundation for the investigator will be this Resolution, that is what the Council is approving, not what procurement says but what this says. Again, the scope of the bid document and the procurement is the first phase and it would be with the assistance of the Finance Department Procurement Officer.

Ms. Nakamura:

Thank you.

Mr. Kagawa: Before I ask Councilmember Rapozo some questions, I wanted to get some answers from the County Attorney on some few questions that I have.

Chair Furfaro: I have no problem with that. I want to make sure that everybody understands that this is the County Attorney that we are talking to, or Planning, or Mr. Heu but this is not opening up discussions with the public again. We gave time for public testimony. So, your request is for the County Attorney. I will ask them to come up right now. I want to make sure we understand what I said earlier today, do not be surprise if you are moving forward with Q&A along this line of the investigation. If members of the Administration based on knowing there is going to be an investigation, may choose on the advice not to respond. That is possible too. I am not saying it is the right thing but it is possible.

Mr. Kagawa: Because I feel like my vote is actually one of importance if I am counting right, I kind of feel a little rushed. It has only been a week and we had discussion last week. My first question is, is it premature right now for the Council to invoke our 3.17 powers and how many times in the past has the Council done it and if you have any particular examples. I want to know if it is really going to be successful or not.

There being no objections, the rules are suspended.

ALFRED B. CASTILLO, JR., County Attorney: I can answer that. Council Chair, can I answer that question?

Chair Furfaro:

Yes.

Mr. Castillo: Thank you. Let me preference this by a little bit of background. Councilmember Mel Rapozo was part of the original TVR ordinance in 864. After that we had a couple of different iterations of the TVR bill. If you were present as we went through time, and as we identified the legalities to the Councilmembers at that time that would have probably gave you a little bit of history about the law itself. In terms of the 3.17 endeavor that you are trying to do now, the way that I can premise it is 25 years ago and I was the First Deputy Prosecutor, I was asked to do an investigative Grand Jury that have never done before as far as my understanding. It was an investigative Grand Jury on an alleged corruption case. One of the things I did as an Attorney should do is make sure you go through the rules before you conduct an investigative Grand Jury that has never been done before, especially on the island of Kaua'i. When the mention of 3.17 was going back and forth last week, it gave me raise to... my antennas were raised because it is my understanding that it was in Resolution 2005-25. It was done before, I mean the Resolution was done before but the investigation fell short. The Council did not engage in the investigation. I believe the need for the investigation to go through ended. Councilmember Kagawa, I am looking at the Resolution as it is stated, a few days ago I sat down and I reviewed the Resolution and I quickly noticed that the Resolution went a little bit farther into what is

authorized by 3.17. If you look at 3.17 it does say that the Charter authorizes investigation into the operation of an agency. The way that I look at it is the operation of an agency and yes you are discussing what procedures as the agency gone through. What is completing and what complicates matters and I listen to what Councilmember Rapozo said in his phases, the phases do not match with what the Resolution states. I am not pass any judgment on that. What I am concerned about is that I wish that we would have had the opportunity to review the proposal or the proposed Resolution first for legality because... and Councilmembers touched upon it, because when you have items in the proposed Resolution that says that the Committee shall investigate and make findings regarding compliance, well, the research says that the County Council is not vested with the authority to adjudicate the status of contested property rights. This is basically what it is, the Council has every right to go and investigate but to make findings regarding compliance would be outside of the Council's jurisdiction. The reason for that is that TVR owners have due process right and the County has rights of its own also. What I see in the Resolution is, I see almost 20 separate contested case hearings that is how the Resolution is being set up. If you look at 5e it says that the Committee can hold hearings and what that will entail is that it will entail a certified Court appointed Court reporter and they are expensive, it is \$1,000 a day. The reason for that is, any time you have a hearing, we have to ensure that everything is accurately recorded. The other concern that I have is, not only that there will be findings according to the Resolution and I believe that we can fix the Resolution. According to the Resolution, it also says that the Committee will be able to make findings regarding misconduct. That in itself is problematic.

Mr. Rapozo: Mr. Chair? He is reading part of the sentence and not all of the sentence, so I want to make sure that we understand what the... if I may?

Chair Furfaro: Go ahead.

Mr. Rapozo: You read only part of the Resolution... it goes on to say "in the processing of applications for TVR certificates," so this is to investigate the process. This is not to make findings on whether or not they are legal or illegal, so this is how it was written, that is the intent of it, and we are not making findings on whether they are in accordance with the State or County law. We are making findings, or the Committee will make findings whether or not compliance was done in the processing of the application. That is a big difference. We are not there to adjudicate any of these cases. It is to determine whether or not the processing of the application were in compliance with the State code.

Mr. Castillo: I am not here to argue what this says but it basically does say here that the Committee shall where appropriate make findings regarding any alleged misconduct. That ties in directly with 3.17 and the reason why it ties directly with 3.17 is that in any alleged criminal action on the part on any individual, such individual shall have the right to be represented by Counsel. This is embedded within your 3.17 investigation. It says "shall" so the ramifications of this Resolution as you read it, as it stands, there is a possibility that any person convicted of violating or causing or permitting the violation of any provisions of this Chapter could be found guilty in a misdemeanor subject to a year in jail or a large amount of fine. Because you have a criminal penalty attached to it and because you have this 3.17, I really do not know how many people in the Departments and you have named at least a couple Department's here. It would be the Planning Department and Public Works. I am glad that the HGEA Director Gerald Ako was

here because maybe this and maybe that and I think it is because he is concerned about the people that he serves. To me, it is just a red flag that he is here and concerned. It will bring in all of the Attorney's that we need to go through this process. Let me go a bit more... the proposed Resolution is also in conflict with the Resolution No. 2005-25. The whole premise of this proposed Resolution is... it is premise on 205-25 and ordinarily the Committee's presiding officer should be the Chair and the Vice Chair of the Committee of the Whole. Without going any further, it would be my legal recommendation to all of you that we stick to that 205-25 recommendation and I could explain to you in Executive Session why I think that would be prudent for this Council. The last thing that I would...

Chair Furfaro:

Excuse me, Al, before we go any further.

Mr. Hooser: You made two points regarding the findings. The first clause, you were quoting, I agree with Councilmember Rapozo applies to the processing of applications for building permits.

Mr. Castillo: I am sorry, can you tell me where you are reading from?

Mr. Hooser: Specially, item number 3 and 4.

Mr. Castillo: Make findings regarding compliance.

Mr. Hooser: With County ordinances and State Federal Laws in the processing of applications. So, it is specifically about the processing of application. It is not about the validity of the permits, I do not believe. It is a processing of application, so, that is 1 point and the second would be on the last page where it says "The Committee shall, where appropriate, make findings any alleged misconduct," so I am guessing you are saying that it would be better amending it to say "The Committee shall, at its conclusion make appropriate findings or recommendations as warranted," just taking the last sentence on number 8, because the Committee has to have a conclusion.

Mr. Castillo: Yes.

Mr. Hooser: So, if you take the last sentence of number 8 it says, "The Committee shall, at its conclusion, make appropriate findings and recommendation as warranted," will that satisfy your concern. I am assuming that you are here to help us craft language to allow us to move forward with the Resolution.

Mr. Castillo: Absolutely. For the past, what is it now, for the past 4 years, we have been defending our TVR ordinance and we still are. What is problematic for us here in this proposed Resolution is that although you say you want to investigate the process but then you identify properties that you want to make findings regarding compliance, there lays the problem where it is an adjudicative measure that you are doing you do not have any jurisdiction. I certainly agree that you can investigate and make recommendations to law enforcement that this is what you found but it is a whole findings regarding compliance.

Mr. Hooser: I think I understand. So, those provisions can be resolved through wordsmithing if you would.

Mr. Castillo:
something.

I think my legal minds might want to say

MAUNA KEA TRASK, Deputy County Attorney: What I would like to add in this is mere is what Councilmember Yukimura said which the specific authority is as laid out in the Charter and 3.17 is clear. I think that it would be, like you said Councilmember Hooser, is a matter of rewording the ordinance and I think that if you look at 3.17 compliances mentioned, just go with operation and function with any County agency and any other matter that you can legislate and just keep it that. What that means and how that proceeds is... really affects not only the process itself, the beginning, middle, and the end because there maybe potential for violations of... and I think I want to use the appropriate language in here.

Mr. Hooser: I talked about the ordinance for the 1 finding, "the Committee shall in conclusion make appropriate findings and recommendations as warranted," and the other one "the Committee shall investigate and make findings regarding the processing of applications for buildings and permits," how is that?

Mr. Trask: That is what...

Mr. Hooser: Leave the word "compliance" out.

Mr. Trask: You are talking about 4?

Mr. Hooser: 3 and 4.

Mr. Trask: In the processing of application for building permits to repair improved structures located on properties identified by the following tax map key numbers. So, when you are looking at launching an investigation on 3.17, as is your right under the Charter and the law is clear and there is case law throughout the Country, all municipalities; however, it is a matter of the limit of the authority because you do have a separation of powers issued. It is also a question of, like any municipal legislative body; if something is done against procedure then it could be rectified, it can be adopted later appropriately. It is avoidable versus void at the inception however if there was never authority to take that action in the first place then it is void. If you are going to embarked on this very important action, I will advice you not only to make it solid and do not leave any argument on the backend that this was void or they were without because so many issues can pop up at that point. Sometimes when you say that we want to do this but it is not going to be totaled this way, we are going to limit ourselves, as your Attorney, I would never recommend you limit yourself. If you have powers "a,b,c,d" leave it open so you can do that, like Councilmember Rapozo said, and I have criminal experience as well, you want to have those powers, do not hamstring yourself. You are the Council, use all of your authority but make sure that it is correct and clean.

Chair Furfaro: I would like you to stop there for a second, there has been at least two memorandums from myself as Chairman reminding members if you have a document that focuses on an ordinance pertaining to Charter issues, codes... I am just finding out now that this was not sent to the County Attorney's Office for review. Is that what I am hearing?

Mr. Castillo: That is true but the good thing is that we are here.

Chair Furfaro: That is the good thing but we are taking a lot of time to review something that should have been across the floor and then presented for those who wanted to introduce it.

Mr. Castillo: We would have liked that.

Chair Furfaro: I have talked about this in my 3 years as Chair. Let us continue with it but I am just hearing this for the first time.

Mr. Castillo: Can I answer?

Chair Furfaro: One moment.

Ms. Nakamura: If it is acceptable to the introducers of this Resolution to get County Attorney's feedback before moving forward, I would like to ask for a deferment.

Mr. Rapozo: I do not have a problem with a deferral. I do not know how the rest of you feel but I feel that... we will just do it. We will just send it over there. I am not comfortable with what I am hearing from the County Attorney. Like Mr. Hooser said, can we get an attorney that can actually get this done and not telling us everything we do is not right. We have this authority, we have done it and I was here for the last 3.17 Resolution, so were you, Mr. Chair. That one was different because the Administration was supportive of it, so it went a little different. I apologize, Mr. Chair, we should have sent it over. I did work with our legal analyst here to make sure we were what we believe is in compliance with the Charter. I believe this is in the Charter. I do not expect anybody else to vote on this today.

Chair Furfaro: I hope you folks understand my point. I want to reiterate our legal analyst, at the end of the day, would not have a leg to stand on because they are not the assigned County Attorney.

Mr. Rapozo: I understand sir. I will say this though, let us end it, let us make the motion to defer because I do not want to waste no time either sitting here listening to reasons why this is going to happen. Let us get it to them, get it back and then we can discuss it at that point.

Chair Furfaro: Okay, gentlemen, I want to say again that I sensed the urgency of posting it, I have posted it. I did not know that it had not been reviewed at my request from the County Attorney in advance. We may want to defer this for... can I ask you... 2 weeks?

Mr. Castillo: 2 weeks would be fine. We have already started reviewing the cases.

Chair Furfaro: Okay. I have consensus from Mr. Rapozo, may I ask Mr. Hooser would you consent to my request to have this in advance review by the County Attorney?

Mr. Hooser: Yes, I will Chair. I support Councilmember Rapozo. It is my understanding that this findings are not binding on anyone. This is just a legislative action trying to get the facts straight and I would want to have it in the best form possible but it is not law that we are passing. This is just a Legislative act that the Council is authorizing us to move forward. We have the powers to do that but having said that, I believe the role of the Council is that they would like the County Attorney to review it and make recommendations that would allow us to move forward with this action, is my understanding, yes.

Chair Furfaro: I understand your point, it is not a matter of law but the reality is we begin something as an investigation and we find ourselves with the other side on one of these 18 applicants putting up some challenges, I would feel comfortable in my responsibility to make sure it was vented by the County Attorney.

Mr. Hooser: I agree.

Chair Furfaro: Based on the calendar, we would come back June 12th, we finish budget, and you will have the document appropriately reviewed by your Office in advance, okay.

Mr. Bynum: I had really hoped to do this today. I had no... I mean, it is a requirement for anything I introduce at this Council to send it to you guys first. I thought that had happened.

Chair Furfaro: So did I.

Mr. Bynum: But I think the dialogue that we just engaged in was helpful and meaningful. We got probably halfway through your objections and the key word was, Mr. Castillo saying "we can fix this." I think the clarifications that Councilmember Rapozo offered about reading the complete sentence. Some of this maybe semantics because we are agreeing that the intention is not to investigate these specific... to make findings on these specific things but to look at the process. I had amendments today that I would have liked to have discussed and introduced. So, I think this should go to you and we should defer but I do not know that we should stop this discussion right now because I thought it was quite fruitful up to this point and I did not get a chance to engage in it. I was deferring to the members who put their names on this Resolution.

Chair Furfaro: I understand all your points Mr. Bynum, I just heard for the first time of all these recommended changes and so I am asking basic questions that has been part of my Chairmanship, has it been reviewed, which you acknowledged that they reviewed your pieces. I clearly understand your point as well.

Mr. Bynum: So, you want to not have any more discussion today?

Chair Furfaro: No, I am going to talk with all the members here for a second.

Mr. Bynum: I have some questions for the County Attorney.

Chair Furfaro: No, no, no. I want to talk about moving forward or not. I gave the courtesy to the 2 introducers to find out...

Mr. Bynum: I see.

Chair Furfaro: ...if we defer it to that review. That was the courtesy I extended then. Both of them said that they are fine with it. Now, I will talk to the rest of the members.

Mr. Bynum: I would just like to note that I did not have an opportunity to ask questions and depending on what the group decides, I would like to circulate the amendments, at least, or maybe... have the amendments go to the County Attorney and other members so that they know what it is.

Chair Furfaro: I am asking that we can defer this until it gets reviewed by the County Attorney. If you have amendments that you want to make available to us right now, I will give you the floor so you can speak to them. Mr. Kagawa, would you be okay with a deferral?

Mr. Kagawa: Yes.

Chair Furfaro: JoAnn, would you be okay with a deferral?

Ms. Yukimura: Yes, but I have some procedural questions before we close this item.

Chair Furfaro: Okay. Tim, you said that as long you can circulate your amendments...

Mr. Bynum: I would like to. I thought this is a fruitful dialogue.

Chair Furfaro: Let me finish the question... get the floor to speak on your amendments, circulate them, and then you are okay with a deferral?

Mr. Bynum: Yes.

Chair Furfaro: Okay. Vice Chair, same here?

Ms. Nakamura: Yes.

Mr. Rapozo: Can I ask a question real quick from the County Attorney?

Chair Furfaro: Yes.

Mr. Rapozo: Mauna Kea, I have a question. "Legislative findings and Court findings" are very different, right?

Mr. Trask: How do you mean?

Mr. Rapozo: In this Resolution the context of the findings is Legislative findings versus Court findings. The finding of a Court which would be subject to appeal and in this case what we are talking about is Legislative findings.

So, basically the findings would be turned over to the Council with recommendation – potential recommendations. It would not have any effect of law whatsoever, it would just be a findings that we found whether it was done by a private investigator or we took the liberty of subpoenaing every County employee and bring them up here like they do at Congress or the State. At the end of the day, the Committee gets together and say this is what we found Council and these are our recommendations.

Mr. Trask: To that point and this is from McQuillin Municipal Corporations Section 13-5, Functions of Council Judicial or Quasi Judicial – a municipal Council is primarily a Legislative and Administrative body but it is often vested with judicial or quasi judicial functions. It goes on to say, in a quasi judicial in some jurisdictions for example, in McQuillin's itself there is a legal encyclopedia, so it gives you the basis and then you go look at a specific jurisdiction. For the purpose of discussion today, the Administrative word should state findings and if it does, that precludes inquiry outside the Administrative records to determine what evidence was considered and what reasoning employed by the Administrators. The reason why this is important is, in many of these cases that we read, because it is a quasi-judicial proceeding, it is going to be subject to Circuit Court Review. When you do that, often times the Defendants or the people who will be Defendants...

Mr. Rapozo: No, no... I need to make myself clear because I am not sure what you just said. What did you say about it may be subject to a judicial review?

Mr. Trask: Correct.

Mr. Rapozo: What would the actions of this Council be subject to judicial review if we are just looking if a dot was not dotted or a "t" was not crossed... I do not understand. We are looking at process. We are not looking at the substantive issues of the permit. We are looking at the process. So, I do not know where the judicial review comes up. "Subject to judicial review."

Mr. Trask: Rolling back to the question, is this a 3.17 investigation?

Mr. Rapozo: Yes.

Mr. Trask: Are you looking at the operations or functions of any County agency or are you doing a Performance Audit?

Mr. Rapozo: No, we are doing a 3.17.

Mr. Trask: So, if it is a 3.17 then you may make findings regarding... as stated in the Ordinance and this is Section 8, you may make findings regarding any alleged misconduct related to the laws that the County of Kaua'i is charged with implementing. If you make such findings, that person who the findings are rendered against is going to contest them and it is going to end up like this body has said in a judicial proceedings.

Mr. Rapozo: No, but the findings is not an action. In other words, this body could...

Mr. Trask: It is a quasi judicial action.

Mr. Rapozo: Right but we do not have the authority to put anyone on suspension and we know that so I am not sure, we would recommend, we would forward it to the Administration if there were any findings involving someone outside of our office.

Mr. Castillo: Council Chair, I know we are going around in circles but arguing about what "findings" means, I think is counterproductive. What is important here is that the Resolution as it stands now, the way the it is worded regarding the findings of compliance is problematic.

Chair Furfaro: Understood. What I am saying is, please fully cooperate with the 2 members that introduced this Resolution because I want to make sure we are very clear and we are not going to sit in front of the cameras for an hour and a half to discuss legal migrations on the Resolution. Two pieces here, I want this discussion to continue if you have amendments that you are planning to introduce so we can circulate it and it is in public and number two there was a question raised, would we go to the Council Meeting on June 12th or would we defer it to Committee on June 5th. That discussion still has to happen here. You can stay right there but I want to have that discussion amongst the members here.

Mr. Kagawa: I would like to move it to Council – June 12. I believe that members pretty much know what they need to know about this. Basically, we just need to see the Resolution in its final form, I believe, and it would probably be ready to call for the question.

Ms. Yukimura: I was thinking it would be best in Committee because there would be a lot of dialogue but June 5... I am going to be gone.

Mr. Rapozo: Let do it in Committee.

Mr. Kagawa: I change my motion.

Ms. Yukimura: If it is on the 5th it is okay because there is a chance on the 12th to deal with it. I am okay either way.

Chair Furfaro: But it sounds like we are at the 12th.

Mr. Castillo: Council Chair, I am sorry but it is hard for Ian Jung to be at 2 places at 1 time and I would prefer him here but I think the Planning Commission meets on that day for some odd reason.

Ms. Yukimura: On which day?

Mr. Castillo: The 12th.

IAN JUNG, Deputy County Attorney: I believe it is Prince Kūhiʻō Day or Kamehameha Day – one of the two.

Chair Furfaro: Our schedule would have reflected that...

Mr. Jung: June 11th, so the Planning Commission meets ordinarily on a Tuesday but because the Holiday is on a Tuesday, the meeting gets bumped to Wednesday.

Chair Furfaro: And the Planning Commission could not make a move to have it on the 13th? I am serious. Why should we yield our time because we are now in conflict with a different Commission?

Mr. Jung: I will leave it up to you.

Chair Furfaro: You just heard my recommendation. I strongly recommend that the Planning Department, because of the Holiday, schedule their piece on the 13th so my Attorney's for the Council can be available for this very important date. Sounds reasonable?

Mr. Jung: Reasonable.

Ms. Yukimura: I wanted to also be clear that we still have next week on the Council agenda a chance to talk to the Planning Department because those 30 things you mentioned, I believe, are some investigations or something that are presently ongoing in the Planning Department with respect to TRVs and that is not something that has been clear.

Chair Furfaro: I want to make myself very clear, I am asking because despite what Mr. Bynum said, if you want to pursue my vote it is going to be support on the items listed. It is not going to be something that is taking us on... because we need a start idea and we need an end idea. I did not overlay the template on their business that I read through to see what matches with us, I just wanted to make sure that we were sensitive, that we were not going to encroach on whatever they were doing already.

Ms. Yukimura: I want to further discuss with them and I believe it is with them meaning the Planning Department, the item that is on the agenda next week for discussion.

Chair Furfaro: Then do it next week.

Ms. Yukimura: So, I just want to be clear that that is still ongoing, if you would.

Mr. Castillo: Council Chair, based on what you just said, the Resolution does open the door at the discretion of the Committee.

Chair Furfaro: That is what I said earlier.

Mr. Castillo: Yes.

Chair Furfaro: I want to make myself very clear, regardless of what the other Councilmembers said, if you want my support on this Resolution it is going to be identified by the tax key numbers on the Resolution.

Mr. Castillo: Okay, understood.

Chair Furfaro: But if it starts going out to all items and so forth, we will never finish. We have already been at this for 12 years. That is all I wanted to say. You understood where I was?

Mr. Castillo: Yes.

Chair Furfaro: Now, it sounds like we are going to come back on June 12th date. There are considerations by Planning Commission if they are going to free you up.

Mr. Jung: I will make myself available but the problem is that we have already sent out notices for the Planning Commission Meeting, so we will hold the Planning Commission... notices for hearings that are set for that day. So, the Planning Commission will go on and then I will make myself available as needed to this body. I will get coverage for the Planning Commission.

Chair Furfaro: I have talked about this earlier today – if I was not fast enough as a quarterback, they would move me to inside linebacker. I would hope that you have a backup.

Mr. Jung: Normally, my backup is Mauna Kea. We got it.

Chair Furfaro: So, to the 2 introducers of the Resolution, you have access to the County Attorney's Office to review your Resolution which we are going to defer until June 12th. Members who would like to carry on the discussion as it relates to any amendments you would introduce now. I am going once, twice...

Mr. Bynum: I am sorry...

Chair Furfaro: If you 2 were listening to the Chair, you would know...

Mr. Bynum: Yes, I would know...

Chair Furfaro: Okay, do you have any amendments that you want to share? Okay.

Mr. Bynum: I have two amendments. One, puts this in the Committee of the Whole. For me to support this, I need to have a full Council involvement and Sunshine – makes it better in my opinion. One amendment puts it in the Committee of the Whole and the other amendment is in paragraph four, at the bottom, where it says if the Committee determines that other building permit applications warrant investigated, this amendment puts in three words... so, it would read "if the Committee determines that other building permit applications related to TVRs warrant investigation." So, those are the two amendments that I intend to introduce.

Chair Furfaro: So, no action on anything today, we are just circulating the intent.

Mr. Rapozo: I know you had some issues with what Mr. Bynum talked about the fact that he has tightened it up to only TVR, is that satisfactory to you or do you want nothing outside of what is listed on TMK?

Chair Furfaro: Let me say that again, my concern if we do not identify what we are investigating for good reason as brought to us, this thing could go on for a very long time.

Mr. Rapozo: I guess I want to know...

Chair Furfaro: Once you audit the TVRs that are listed by tax key and application, it seems to me it will tighten up coming to a conclusion. That is what it feels to me. I do not want something that goes on forever.

Mr. Rapozo: The question is that Mr. Bynum's tightens it up a little bit but keeps it related to TVRs.

Chair Furfaro: I will think about it.

Mr. Rapozo: Okay. I am prepared to move that section.

Chair Furfaro: I looked at that having a investigated period, a time on certain items, and to me it sends the right message that we got cause on certain applications and we are going to investigate those applications.

Mr. Hooser: I think there are two points; one is Mr. Bynum's that in terms of building permits, it should be TVR related building permit, certainly sounds acceptable to me. In terms of the Chair's point that only limited to this list, the existing language does give some latitude to expand it. I understand that you are concerned about that and we could... I know we are not going to decide right now but what we could say, upon approval of the Committee as a Whole. So if the investigator finds something and comes to the Committee and say there is some stuff here, the Committee can come to the Council as a whole possible present the things and then the Committee as a whole could expand the scope. Would that be acceptable?

Chair Furfaro: And then I might be only one vote that says expand it or not to expand it... but I am just trying to make my point about if we have an investigation, very targeted, very focused, and we get the kind of outcome that we intended to do then it sends the right message to all of the others.

Mr. Bynum: This is an important discussion too and I wish we would have just continued today but I heard the County Attorney saying identifying specific ones is an issue and then the Chair saying, I want specific ones. The problem I have with that is that these all come from the investigation done by PONO and they are all North Shore. If there is anything I learned about TVRs is, there are many types of TVRs and they are all over the island. There are issues on the West Side, Kapa'a, Kalāheo, and so I personally and then we just trust the investigator that we are going to hire. He is certainly going to have to focus on specific ones but naming them, I agree, might be a problem. If we frame it this way without the naming then the investigator could choose to look into these or others. The fundamental flaw with this is the ideology of this are the people who are *Kama'āina* to the North Shore but this issue is island wide. So, we may not pick up

all of the concerns just on this list that mostly high end, oceanfront Hā'ena-Hanalei when there are issues everywhere.

Chair Furfaro: I understand but let me tell you what a surfers dream. You drop in, you sliding right, you get in a tunnel, the curl is breaking over you, and the tunnel ride is for infinity - it goes on forever. I want to make sure you understand. I do not want to end up with an investigation that goes on for infinity. I want to know to come to some conclusion that is all.

Ms. Yukimura: I am with you, Chair, in terms of coming to some conclusion on the specific cases but for that reason I think this is the wrong forum. I think it is really the Planning Department that needs to bring these cases to hearing and to Court as maybe appropriate. I have circulated since everybody is circulating, a question about - one page thing called "legal questions affecting enforcement." To me one of the keys is what is the framework on which Planning is going to enforce these issues and these are legal questions that are really critical that without settling the legal questions, we cannot get justice on the individual applications. We may still do the investigation and everything but I am saying that I want to know from Planning what their legal framework is and I want to know what their plan is for enforcement and I am going to ask those questions next week.

Mr. Rapozo: We are not here... this investigation is not to investigate the legality of these TVRs that is for Planning to do. That is not our function.

Ms. Yukimura: Good.

Mr. Rapozo: Those legal questions are good questions but that is for them when they enforce. The investigation is not on that. It is on the process. How did these TVRs get permission to operate when they should not? We are looking at our internal-County Department on where did the breakdown happen? We are not looking at the TVR and whether or not we are going to enforce. That is not what this investigation is about. It is about investigating the Planning Department to find out how come the paperwork, the requirements were not followed. Where is that breakdown? Is it overworked, under staffed... what is it? But, not to go look and shut down these TVRs, that is not our function. That is the Planning Departments function. I wish it was my function. I would go out there tonight and start shutting them down but I do not have that authority but we do as a body have the authority to say where did it fall apart? That is what this is. So, the legal questions are good ones but that goes to the Planning Department when they decide to enforce. That is a whole other issue. This is just process. We are investigating process and not code violations.

Chair Furfaro: Ian, you wanted to respond?

Mr. Jung: Given the context of the legal issues that have raised, I think it would be prudent for us to go into Executive Session to outline and frame some of the legal concerns we face with, not only Ordinance No. 864 as well as 876 and 904. I can raise some of the issues that the Attorney's on the other side are raising to challenge these ordinances. I would be happy to do that in Executive Session. Obviously, we cannot do it in Open Session because I am pending current litigation right now. If you would like to schedule that, I am willing to do that as well.

Chair Furfaro: If you would like to send us over some posting notification for consideration, we will take a look at it.

Mr. Jung: Sure.

Mr. Hooser: But you understand that we are looking at the investigation and we are not looking at... the item on the agenda now is authorizing the Council to investigate pass practices. It is not about how we... what the Planning Department should do right now to go do their job. We are looking at an investigation and so this is a separate topic that we can talk about next week or in Executive Session.

Mr. Jung: You got to remember these are interrelated because a lot of the advice that was rendered from our Office has implications on some of the TVRs that were listed. For one example was one of my cases that is pending in Court. They do work hand in hand and I am happy to explain how they work hand in hand. I think it needs to be in Executive Session to identify the issues that are being raised.

Mr. Hooser: Thank you. I am happy to support that when the request is made but moving forward, I believe, the decision is that the County Attorney is going to review the Resolution introduced primarily by Councilmember Rapozo and co-introduced by me and you will work with primarily Councilmember Rapozo and myself supporting to craft a Resolution that accommodates the introducers needs as best as you can. So, it is not a policy decision, it is more of a legal crafting of the language using your ability to support what the introducers want to do after. I want to be clear that that is what the process is right now, is that correct?

Mr. Jung: That is correct.

Mr. Trask: That is correct. That is our understanding.

Ms. Yukimura: Several meetings ago, I asked that whenever TVRs were on the agenda, we would have an Executive Session counterpart because of this overlap between Executive Session issues and open session issues, so at next week's meeting because the TVRs...

Chair Furfaro: I think this is what I said...

Ms. Yukimura: Okay.

Chair Furfaro: Let me clarify what I said. Mr. Jung made a recommendation and I said to Mr. Jung, you get the verbiage together on that and send it over so I can review and consider what you are asking for.

Ms. Yukimura: Okay. And so it will be on next week's agenda and also on the 12th. I am only trying to emphasize this because it was dropped. I have recommended it before.

Chair Furfaro: I do not think we have dropped that procedure but your point is well made and yes, I can guarantee you if we are coming back on the 12th there will also be a posting so that if we needed to go into Executive Session, it is legally posted.

Ms. Yukimura: And then I just want to say as a commentary regarding Councilmember Rapozo's statement that the legal issues are separate from the investigation, if you want to know why something was deemed valid when it was not valid, you have to know what the law is. It is a sub-issue this issue of the legal issues, it is a sub-issue within the investigation, I think.

Chair Furfaro: I just want to make one more point of clarification and my point about seeing the TMKs or the permit numbers to potentially get my vote, I need to make sure the parameters for those are there. I am not committing my vote right now. I want to make sure the members realize that because I want an end and start date.

Mr. Bynum: We have these great Attorney's because they use big words that explain things like interrelated... I am just kidding... that is the key, of course all of these things are interrelated. I welcome this Executive Session and I agree with JoAnn that we should do it sooner and multiple times if necessary. I also agree with Councilmember Rapozo. This is not in lieu of anything else that we are doing. The Administration came up and said, here is what we are doing to address this concern, great, go for it. Please do all of those things. Not in lieu of this. Yes, we are going to deal with all of these other issues because they are ongoing and that is what we do but I hope we can come to an agreement to do this investigation on process issues because it is that serious. This is about life and death on one level.

Mr. Castillo: Council Chair.

Mr. Bynum: I just want to say that this is not in lieu of anything else. We are going to continue everything else and they are interrelated but there is a separate purpose for this.

Mr. Castillo: I just wanted to talk about the Executive Session. We have a concern. My concern is that we would like to Executive Session to be on the same day and not an additional one, primarily because Ian has a major reply brief due and that would... he would not be able to do the Executive Session next week.

Mr. Jung: It is the Kaua'i Beach Villas...

Chair Furfaro: I offered you the courtesy of giving me some verbiage and now you are telling me that even if I gave you the courtesy, you cannot comply and you cannot *kōkua*?

Mr. Jung: I am certainly willing to *kōkua* but I am trying to frame my workload right now.

Chair Furfaro: That is why I said two words "comply" and "*kōkua*." I understand that you want to help but the reality is that you cannot comply.

Mr. Jung: I can comply, it is just a matter of when. If we could do it on the 12th...

Chair Furfaro: Do some verbiage for us on the 12th.

Mr. Jung:

Okay, thank you sir.

Ms. Nakamura: So, the 2 amendments that I was going to introduce one deals with Section 8 of the Resolution and the focus of the current Resolution, what is written now focuses on allege misconduct. I think we are all talking about the process issues here, I wanted to say "recommendations may include measures to improve the County's enforcement of TVR and Flood Plain ordinances, measures to improve coordination among Departments, potential changes to the TVR ordinance to improve enforcement, the addition of County staffing resources to fully enforce the TVR ordinance, and follow-up regarding any alleged misconduct," to broaden the type of recommendations that I want to see from an investigation. The other amendment impacts Section number 5 (a) and just to say that it gives the Committee the power to employ professional, technical, clerical, or other personnel as necessary for the proper performance of its duties, and expend such funds appropriated for operating expenses as necessary for the proper performance of its duties. I just wanted to add into the language "to extent that funds are made available for such purpose." That is because we have some limits there. I am worried about the amount of funding that is currently available and I feel that if we are going to go down this route, we need to do a good job and get the best person or qualified firm with sub-consultants with the skills to do the job right. I do not think we should short change that. I would ask the introducers to really take a close look at what the cost is going to be to get the right consultant onboard.

Chair Furfaro: To respond to your question earlier there is some adjustments or corrections and transfers of some funds reviews to get us back to the \$35,000 mark but if I do those corrections and do the line transfer, it will leave us with \$35,000 at this point. Just so that everybody knows that answer.

Mr. Hooser: That \$35,000 in this Fiscal Year and the next budget also?

Chair Furfaro: Just this Fiscal Year, so, there are new money July 1.

Mr. Bynum: No money?

Chair Furfaro: New money.

Mr. Bynum: Good, thank you.

Mr. Kagawa: I just want a "yes" or "no" on this one because I do not want to prolong this but one of the main purposes of doing this 3.17 is to find out where the breakdowns have occurred in leading to this whole mess, just as it happened in Maui and O'ahu – the North Shore. Do we know, Ian, where a lot of those breakdowns are or have been?

Mr. Jung: I have my own sense of where they started and it would be in a context in Executive Session.

Mr. Kagawa: Okay.

Mr. Jung: And the problems that Maui faced and why they changed their law to allow TVRs outright.

Mr. Kagawa: But we know a lot of knowledge of where our breakdowns have occurred?

Mr. Jung: Yes.

Mr. Hooser: Is there any way we could do it sooner than the 12th?

Chair Furfaro: We have a very large schedule.

Mr. Hooser: No, not the Executive Session. I am talking about the amended Resolution?

Chair Furfaro: I will leave that up to you and Mr. Rapozo to meet with the County Attorney's but I have to tell you that May with the closing of the budget, we have a couple of our own Executive Sessions that are pretty serious and will take a couple hours. I will leave it to the two of you.

Mr. Bynum: I hate to bring up other issues but there is a timing issue in terms of what you just said that there is \$35,000 in this year's budget and then there is an additional \$35,000 July 1 and I do not know if that is sufficient even the 2 pieces but if we do not adopt a Resolution and expend those funds before June 30, we are then limited to... we can do a money bill. I was originally instrumental in advocating for those... not the only one, for those consultant funds for the CZO and for other purposes and there has to be some Executive Session about the Council authority to do that based on some recent County Attorney's opinions – that is undone work too. You have a lot of work to do, so I just have concern about the finances.

Chair Furfaro: Sure. Let me tell you how we do that. Some of the money, I told you in this year is earmarked and I got to make some transfers. We are going to be voting on the budget we approved not with new discussion – a yes or no. I am willing to give up some of my travel budget for next year and some of the other things that we can shop around to make sure there are some money because there is no new money to add, it would have to be diverting money from other areas. I just want to say that and that is not part of the discussion now but...

Mr. Bynum: So, not seeing that \$35,000 lapse would be helpful.

Chair Furfaro: Yes, that is what I am agreeing to so that we can tie it up before June 30 but it may not be \$35,000 because we got a couple of lose things hanging out there and I will be glad to follow up on that. When we have the 3 member Committee, you read from a Section that said that the 3rd person would most likely be the Chairman? What were you reading from so I can go...

Mr. Castillo: I read from 2005-25 where it specifically said who the...

Chair Furfaro: Got it. I just wanted to know where you read it. I want to go and read it because I want to give all the members an opportunity but I want to see if I can have that ability to transfer that authority.

Mr. Castillo: The 2005-25 Resolution.

Chair Furfaro: The rules are still suspended, Gary, did you want to come up? If you do not want to come up, that is fine now that we are deferring this. Okay, after you do some more research, you will respond, got it.

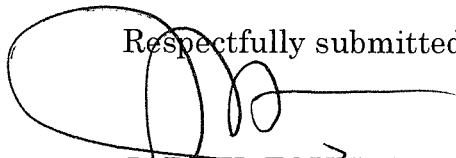
There being no objections, the meeting was called back to order, and proceeded as follows:

Upon motion duly made by Ms. Nakamura, seconded by Ms. Yukimura, and unanimously carried, Resolution No. 2013-55 was deferred to June 12, 2013.

ADJOURNMENT.

There being no further business, the meeting was adjourned at 5:29 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jade K. Fountain-Tanigawa', with a long horizontal line extending to the right.

JADE K. FOUNTAIN-TANIGAWA
Deputy County Clerk

:dmc

